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सं. 42] नई दिल्ली, अक्टूबर 21—अक्टूबर 27, 2018, शनिवार/आश्विन 29—कार्तिक 5, 1940
No. 42] NEW DELHI, OCTOBER 21—OCTOBER 27, 2018, SATURDAY/ASVINA 29—KARTIKA 5, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

नागर विमानन मंत्रालय

नई दिल्ली, 16 अक्टूबर, 2018

का.आ. 1539.—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का संख्या 55) के खंड 3 और खंड 5 द्वारा प्रदत्त शक्तियों का उपयोग करते हुए केंद्र सरकार एतद्वारा डॉ. कसम वेंकटेश्वरालु को तत्काल प्रभाव से तीन वर्षों की अवधि अथवा आगामी आदेशों तक, जो भी पहले हो, भारतीय विमानपत्तन प्राधिकरण के बोर्ड पर अंशकालीन सदस्य (गैर-सरकारी) नियुक्त करती है।

[फा. सं. एवी-24015/4/2015-एएआई-एमओसीए]

पी.जे. थॉमस, अवर सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 16th October, 2018

S.O. 1539.—In exercise of the powers conferred by Section 3 and Section 5 of the Airports Authority of India Act, 1994 (No. 55 of 1994), the Central Government hereby appoint Dr. Kasam Venkateswarlu as part time Member (non-official) on the Board of Airports Authority of India with immediate effect for a period of three years or until further orders, whichever is earlier.

[F. No. AV-24015/4/2015-AAI-MOCA]

P. J. THOMAS, Under Secy.

नई दिल्ली, 18 अक्टूबर, 2018

का.आ. 1540.—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का क्रमांक 55) के खंड 3 द्वारा प्रदत्त शक्तियों का उपयोग करके, केंद्र सरकार एतद्वारा श्री विनीत गुलाटी, कार्यकारी निदेशक, एएआई को 5 अक्टूबर, 2018 के अपराह्न से उनकी सेवानिवृत्ति, अर्थात् 31.01.2021 तक अथवा आगामी आदेशों तक, जो भी पहले हो, वेतनमान रुपये 75,000-1,00,000 (संशोधन पूर्व) की अनुसूची 'ए' में सदस्य (वायु दिक्चालन सेवा), भारतीय विमानपत्तन प्राधिकरण के रूप में नियुक्त करती है। उपर्युक्त नियुक्ति श्री जे.पी. अलेक्स, कार्यकारी निदेशक, भारतीय विमानपत्तन प्राधिकरण द्वारा दिल्ली उच्च न्यायालय के समक्ष दायर रिट-याचिका (सिविल) सं. 6787/2018 के परिणाम के अधीन है।

[फा. सं. एवी-24011/14/2017-एएआई-एमओसीए]

पी. जे. थॉमस, अवर सचिव

New Delhi, the 18th October, 2018

S. O. 1540.—In exercise of the powers conferred by Section 3 of the Airports Authority of India Act, 1994 (No.55 of 1994), the Central Government hereby appoint Shri Vineet Gulati, Executive Director, AAI as Member (Air Navigation Services), Airports Authority of India in Schedule 'A' scale of pay of Rs.75000-100000 (pre-revised) with effect from afternoon of 5th October, 2018 till the date of his superannuation i.e. 31.01.2021 or until further orders, whichever is earlier. The above appointment is subject to the outcome of the Writ Petition (Civil) No. 6787/2018 filed by Shri J. P. Alex, Executive Director, Airports Authority of India before the High Court of Delhi.

[F. No. AV-24011/14/2017-AAI-MOCA]

P. J. THOMAS, Under Secy.

उत्तर पूर्वी क्षेत्र विकास मंत्रालय

नई दिल्ली, 17 अक्टूबर, 2018

का.आ. 1541.—राष्ट्रपति श्री गेइरंगदिन पानमेई, आई.आर.एस. (सी.एंड.सी.ई.):1989 को दिनांक 01 अक्टूबर, 2018 के पूर्वाह्न से उत्तर पूर्वी क्षेत्र विकास मंत्रालय के अधीन पूर्वोत्तर परिषद (एन.ई.सी.) सचिवालय, शिलांग में 5 वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, वेतन मैट्रिक्स के 14वें लेवल [रु.1,44,200-रु. 2,18,200] के वेतन पर वित्तीय सलाहकार नियुक्त करते हैं।

[फा. सं. एन.ई.सी.-17/50/2018-निदेशक(एन.ई.सी.)]

नेहजामांग सिमते, अवर सचिव

MINISTRY OF DEVELOPMENT OF NORTH EASTERN REGIONNew Delhi, the 17th October, 2018

S. O. 1541.— President is pleased to appoint Shri Gaigongdin Panmei, IRS (C&CE):1989 as Financial Adviser in the North Eastern Council (NEC) Secretariat, Shillong under the Ministry of Development of North Eastern Region with pay at Level 14 (Rs. 1,44,200 – 2,18,200) of the Pay Matrix for a period of 5 years with effect from 01st October, 2018 (F/N) or till further orders, whichever is earlier.

[F. No. NEC - 17/50/2018 – O/o DIR (NEC)]

NEHJAMANG SIMTE, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 22 अक्टूबर, 2018

का. आ. 1542.— तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री दिवाकर नाथ मिश्रा, आईएएस (एएम: 2000) को पद का कार्यभार ग्रहण करने की तारीख से दिनांक 03.10.2019 तक के कार्यकाल अथवा अगले आदेश होने तक, इनमें से जो भी पहले हो, के लिए वेतन मैट्रिक्स के लेवल 14 (1,44,200-2,18,200 रुपए) में श्री संजीव मित्तल, आईडीएस (1984) के स्थान पर पेट्रोलियम और प्राकृतिक गैस मंत्रालय के नियंत्रणाधीन तेल उद्योग विकास बोर्ड (ओआईडीबी) के सचिव (संयुक्त सचिव स्तर) के रूप में एतद्वारा नियुक्त करती है।

[फा. सं. जी-38011/32/2017-वित्त-I]

पेरिन देवी, निदेशक (आईएफडी)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 22nd October, 2018

S.O. 1542.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri Diwakar Nath Misra, IAS (AM: 2000) as Secretary (JS level), Oil Industry Development Board (OIDB) under the Ministry of Petroleum & Natural Gas with pay at Level 14 (Rs. 1,44,200-2,18,200/-) of Pay Matrix on deputation basis for a tenure upto 03.10.2019 from the date of assumption of the charge or until further orders, whichever is earlier, vice Shri Sanjiv Mittal, IDAS (1984).

[F. No. G-38011/32/2017-Fin. I]

PERIN DEVI, Director (IFD)

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1543.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप धारा (3)(सी) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री डी. राजकुमार, अध्यक्ष एवं प्रबंध निदेशक, बीपीसीएल को दिनांक 01.10.2018 से दिनांक 31.08.2020 तक अथवा अगले आदेश होने तक, इनमें से जो भी पहले हो, के लिए तेल उद्योग विकास बोर्ड के सदस्य के रूप में एतद्वारा नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I]

पेरिन देवी, निदेशक

New Delhi, the 23rd October, 2018

S.O. 1543.—In exercise of the Powers conferred by Sub-Section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri D. Rajkumar, CMD, BPCL as a member of the Oil Industry Development Board w.e.f. 01-10-2018 to 31-08-2020 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.I]

PERIN DEVI, Director

नई दिल्ली, 25 अक्टूबर, 2018

का. आ. 1544.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन(भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ (1) में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के संबंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात् :—

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री अरुण कुमार झा, संयुक्त सचिव (सेवा निवृत्त), बिहार प्रशासनिक सेवा, सक्षम अधिकारी, पारादीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना, हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना, मोतिहारी - अमेलखगंज पाइपलाइन परियोजना, पटना - मोतिहारी - बैतालपुर पाइपलाइन परियोजना एवं मुजफ्फरपुर - गोरखपुर पाइपलाइन परियोजना, इंडियन ऑयल कॉरपोरेशन लिमिटेड, निर्माण कार्यालय, ई.आर.पी.एल.-पटना, हाउस न. - 260, पाटलीपुत्र कॉलोनी, शिव मन्दिर के पास, गोसाई टोला, पटना, बिहार- 800013	बिहार राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. ओआर-11025(11)/15/2018-ओआर-I/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1544.— In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorises the person mentioned in column (1) of the Schedule given below to perform the functions of the “Competent Authority” under the said Act, in respect of the area mentioned in column (2) of the said Schedule:

SCHEDULE

Name and Address of the Authority (1)	Area of jurisdiction (2)
Shri Arun Kumar Jha, Joint Secretary (Retired), Bihar Administrative Service, Competent Authority, Augmentation of Paradip- Haldia - Durgapur Pipeline and its extension upto Patna and Muzaffarpur Project, Haldia-Barauni Pipeline Systems Project, Motihari-Amlekhgunj Pipeline Project, Patna-Motihari-Baitalpur Pipeline Project and Muzaffarpur-Gorakhpur Pipeline Project, Indian Oil Corporation Limited, Construction Office, ERPL-Patna, House no. 260, Patliputra Colony, Near Shiv Mandir, Gosain Tola, Patna, Bihar-800013	State of Bihar

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1545.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962, (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में तारीख 8 अक्टूबर से 14 अक्टूबर, 2017 को भारत के राजपत्र (साप्ताहिक) में प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2397, 5 अक्टूबर 2017 में निम्नलिखित रूप से संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की अनुसूची में

" श्री विश्वनाथ समझदार

डब्लु. बी. सी. एस. (प्रशासनिक) अवकाश प्राप्त

सक्षम अधिकारी

इंडियन ऑयल कॉर्पोरेशन लिमिटेड

पारदीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन,

पारदीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन ऑगमेंटेशन एवं

पारदीप - हल्दिया- बरौनी पाइपलाइन ऑगमेंटेशन योजना

डाकघर - दुईल्या, आन्दुल - मौरी, मौरीग्राम

हावड़ा - 711 302 (पश्चिम बंगाल)

श्री अशोक कुमार सरकार
डब्ल्यू. बी. सी. एस. (प्रशासनिक) अवकाश प्राप्त
सक्षम अधिकारी
इंडियन ऑयल कॉर्पोरेशन लिमिटेड
पारादीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन,
पारादीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन ऑगमेंटेशन एवं
पारादीप - हल्दिया- बरौनी पाइपलाइन ऑगमेंटेशन योजना
डाकघर - दुईल्या, आन्दुल - मौरी, मौरीग्राम
हावड़ा - 711 302 (पश्चिम बंगाल)"

शब्दों और अंकों के स्थान पर

"श्री विश्वनाथ समझदार
डब्ल्यू. बी. सी. एस. (प्रशासनिक) अवकाश प्राप्त
सक्षम अधिकारी
इंडियन ऑयल कॉर्पोरेशन लिमिटेड
पारादीप - हल्दिया- दुर्गापुर पाइपलाइन परियोजना,
पारादीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन
तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना,
हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना एवं
पारादीप- हल्दिया - सोमनाथपुर पाइपलाइन परियोजना,
डाकघर - दुईल्या, आन्दुल - मौरी, मौरीग्राम
हावड़ा - 711 302 (पश्चिम बंगाल)

श्री अशोक कुमार सरकार
डब्ल्यू. बी. सी. एस. (प्रशासनिक) अवकाश प्राप्त
सक्षम अधिकारी
इंडियन ऑयल कॉर्पोरेशन लिमिटेड
पारादीप - हल्दिया- दुर्गापुर पाइपलाइन परियोजना,
पारादीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन
तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना,
हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना एवं
पारादीप- हल्दिया - सोमनाथपुर पाइपलाइन परियोजना,
डाकघर - दुईल्या, आन्दुल - मौरी, मौरीग्राम
हावड़ा - 711 302 (पश्चिम बंगाल)"

पढ़ा जाए।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. ओआर-11025(11)/15/2018-ओआर-1/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1545.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas. S.O. No 2397 dated 5 October 2017, published in the Gazette of India (Weekly) from 8 October to 14 October, 2017 namely:—

In the Said Notification, for the numbers and words,
 "Shri Biswanath Samajder
 W.B.C.S. (Exe.) Retd.
 Competent Authority
 Indian Oil Corporation Limited
 Paradip - Haldia- Durgapur LPG pipeline,
 Augmentation of Paradip- Haldia - Durgapur LPG Pipeline,
 Augmentation of Paradip- Haldia- Barauni pipeline,
 P.O. Duilya, Andul - Mouri, Mourigram,
 Howrah - 711 302 (West Bengal)

Shri Asoke Kumar Sarkar
 W.B.C.S. (Exe.) Retd.
 Competent Authority
 Indian Oil Corporation Limited
 Paradip - Haldia- Durgapur LPG pipeline,
 Augmentation of Paradip- Haldia - Durgapur LPG Pipeline,
 Augmentation of Paradip- Haldia- Barauni pipeline,
 P.O. Duilya, Andul - Mouri, Mourigram,
 Howrah - 711 302 (West Bengal)"

the numbers and words

"Shri Biswanath Samajder
 W.B.C.S. (Exe.) Retd.
 Competent Authority
 Indian Oil Corporation Limited
 Paradip - Haldia- Durgapur Pipeline Project,
 Augmentation of Paradip- Haldia - Durgapur Pipeline
 and its extension upto Patna and Muzaffarpur Project,
 Haldia-Barauni Pipeline Systems Project and
 Paradip-Somnathpur-Haldia-Pipeline Project,
 P.O. Duilya, Andul - Mouri, Mourigram,
 Howrah - 711 302 (West Bengal)

Shri Asoke Kumar Sarkar
 W.B.C.S. (Exe.) Retd.
 Competent Authority
 Indian Oil Corporation Limited
 Paradip - Haldia- Durgapur Pipeline Project,
 Augmentation of Paradip- Haldia - Durgapur Pipeline
 and its extension upto Patna and Muzaffarpur Project,
 Haldia-Barauni Pipeline Systems Project and
 Paradip-Somnathpur-Haldia-Pipeline Project,
 P.O. Duilya, Andul - Mouri, Mourigram,
 Howrah - 711 302 (West Bengal)"

shall be substituted.

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2018

का. आ. 1546.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन(भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ (1) में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के संबंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात् :—

अनुसूची

प्राधिकारी का नाम और पता (1)	अधिकारिता का क्षेत्र (2)
श्री के. बी. राजगुरु, उप कलेक्टर (सेवा निवृत्त) सक्षम अधिकारी कोयली – अहमदनगर – सोलापुर पाइपलाइन परियोजना, इंडियन ऑयल कॉरपोरेशन लिमिटेड, प्लॉट संख्या - 224, प्रथम तल, गुलमोहर रोड, कविजंग नगर, इंडियन बैंक के ऊपर, सावेड़ी, अहमदनगर, महाराष्ट्र – 411003	महाराष्ट्र राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. ओआर-11025(11)/15/2018-ओआर-I/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1546.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorises the person mentioned in column (1) of the Schedule given below to perform the functions of the “Competent Authority” under the said Act, in respect of the area mentioned in column (2) of the said Schedule:—

SCHEDULE

Name and Address of the Authority (1)	Area of jurisdiction (2)
Shri K.B. Rajguru, Deputy Collector (Retd.) Competent Authority Koyali- Ahmednagar- Solapur Pipeline Project, Indian Oil Corporation Limited, Plot no. 224, First floor Gulmohar Road Kavijung Nagar Above Indian Bank, Savedi, Ahmednagar, Maharashtra- 411003	State of Maharashtra

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1547.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962, (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में तारीख 20 अगस्त से 26 अगस्त, 2017 को भारत के राजपत्र (साप्ताहिक) में प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ.1958, 18 अगस्त 2017 में निम्नलिखित रूप से संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में, शब्दों और अंकों के स्थान पर

“ श्री अजय सिंह बड़ाईक (झा.प्र.से.)

सक्षम प्राधिकारी

इंडियन ऑयल कॉर्पोरेशन लिमिटेड

पारादीप हल्दिया दुर्गापुर एल. पी. जी. पाइपलाइन ऑगमेंटेशन एवं

18" हल्दिया बरौनी प्रोडक्ट पाइपलाइन परियोजना

देवघर पैलेस, तीसरा तल, वी आई पी चौक

जसीडीह, देवघर – 814112 (झारखंड)”

निम्नलिखित शब्द और अंक रखे जाएंगे:

“अजय सिंह बड़ाईक (झा.प्र.से.),

सक्षम अधिकारी,

पारादीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन

तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना एवं

हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना,

इंडियन ऑयल कॉर्पोरेशन लिमिटेड,

देवघर पैलेस, तीसरा तल, वी.आई.पी.चौक,

देवघर-814112(झारखंड)”

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-11025(11)/15/2018-ओआर- I/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1547.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas. S.O. No 1958 dated 18 August 2017, published in the Gazette of India (Weekly) from 20 August to 26 August, 2017 namely:—

In the said notification, for the numbers and words,

“Shri Ajay Singh Baraik, JAS

Competent Authority

Indian Oil Corporation Limited

Augmentation of Paradip Haldia Durgapur LPG Pipeline

And 18"Haldia Barauni Product Pipeline Projects

" Deoghar Palace" , 3rd Floor, VIP Chowk,

Jasidih, Deoghar - 814112 (Jharkhand)”

the following numbers and words shall be substituted:

“Shri. Ajay Singh Baraik (JAS),
Competent Authority,
Augmentation of Paradip- Haldia - Durgapur Pipeline
and its extension upto Patna and Muzaffarpur Project and
Haldia-Barauni Pipeline System Projects,
Indian Oil Corporation Limited,
Deoghar Palace, 3rd Floor, VIP Chowk,
Deoghar - 814112 (Jharkhand)”

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1548.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962, (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में तारीख 14 अगस्त, 2017 को भारत के राजपत्र (असाधारण) में प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ.2614 (अ), 9 अगस्त 2017 में निम्नलिखित रूप से संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, शब्दों और अंकों के स्थान पर

"श्री जगदीश प्रसाद सिंह
संयुक्त सचिव (सेवा निवृत्त)
बिहार प्रशासनिक सेवा
सक्षम प्राधिकारी

1. पटना – मोतिहारी – बैतालपुर पाइपलाइन,
2. पारदीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन का संवर्धन तथा पटना और मुजफ्फरपुर तक इसका विस्तार
3. मोतिहारी – अमेलखगंज पाइपलाइन परियोजना, (बिहार राज्य के अंतर्गत)
4. 18" हल्दिया बरौनी पाइपलाइन परियोजना, (बिहार राज्य के अंतर्गत)
निर्माण कार्यालय मोतिहारी
पाइपलाइन डिविजन, इंडियन ऑयल कॉर्पोरेशन लिमिटेड
न्यू गोपालपुर, पश्चिम मोतिहारी, पूर्वी चम्पारण, बिहार 845401"

श्री भुवनेश्वर मिश्र
अपर सचिव (सेवा निवृत्त)
बिहार प्रशासनिक सेवा
सक्षम प्राधिकारी

1. पटना – मोतिहारी – बैतालपुर पाइपलाइन,
2. पाइपलाइन प्रतिस्थापना (बी के पी एल)

3. पारदीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन का संवर्धन तथा पटना और मुजफ्फरपुर तक इसका विस्तार
4. मोतिहारी - अमेलखगंज पाइपलाइन परियोजना, (बिहार राज्य के अंतर्गत)
5. 18" हल्दिया बरौनी पाइपलाइन परियोजना, (बिहार राज्य के अंतर्गत)
निर्माण कार्यालय बरौनी,
पाइपलाइन डिविजन, इंडियन ऑयल कॉर्पोरेशन लिमिटेड
बी के पी एल मुख्यालय परिसर,
पो.- बरौनी ऑयल रिफाइनरी,
जिला- बेगूसराय, बिहार 851114

निम्नलिखित शब्द और अंक रखे जाएं:

“श्री जगदीश प्रसाद सिंह,
संयुक्त सचिव (सेवा निवृत्त), बिहार प्रशासनिक सेवा,
सक्षम प्राधिकारी,
पारादीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन
तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना,
हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना,
मोतिहारी - अमेलखगंज पाइपलाइन परियोजना,
पटना - मोतिहारी - बैतालपुर पाइपलाइन परियोजना एवं
मुजफ्फरपुर - गोरखपुर पाइपलाइन परियोजना,
इंडियन ऑयल कॉर्पोरेशन लिमिटेड,
निर्माण कार्यालय, ई आर पी एल, पटना
हाउस न.- 260, पाटलीपुत्र कॉलोनी,
शिव मंदिर के पास, गोसाईं टोला,
पटना- 800013 (बिहार)”

“श्री भुवनेश्वर मिश्र,
अपर सचिव (सेवा निवृत्त), बिहार प्रशासनिक सेवा,
सक्षम प्राधिकारी,
पारादीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन
तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना,
हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना,
मोतिहारी - अमेलखगंज पाइपलाइन परियोजना,
पटना - मोतिहारी - बैतालपुर पाइपलाइन परियोजना एवं
मुजफ्फरपुर - गोरखपुर पाइपलाइन परियोजना,
इंडियन ऑयल कॉर्पोरेशन लिमिटेड,
निर्माण कार्यालय बरौनी,
पाइपलाइन डिविजन, बी के पी एल मुख्यालय परिसर,

पो.- बरौनी ऑयल रिफाइनरी,
जिला- बेगूसराय, बिहार 851114”

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-11025(11)/15/2018-ओआर- I/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1548.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas. S.O. No 2614 (E) dated 9 August 2017, published in the Extra Ordinary Gazette of India on 14 August, 2017 namely:—

In the Said Notification, for the numbers and words,

“Shri Jagdish Prasad Singh
Joint Secretary (Retired)
Bihar Administrative Service
Competent Authority,

- 1) Patna-Motihari-Baitalpur Branch Pipeline
- 2) Augmentation of Paradip–Haldia–Durgapur LPG Pipeline and its extension up to Patna and Muzaffarpur.
- 3) Motihari-Amlekhgunj Pipeline Project (in the State of Bihar).
- 4) 18” Haldia-Barauni Pipeline (in the State of Bihar).

Construction office Motihari,
Pipelines Division, Indian Oil Corporation Limited,
New Gopalpur, West Motihari, East Champaran Bihar-845401”

“Shri Bhubneshwar Mishra
Additional Secretary (Retired)
Bihar Administrative Service
Competent Authority,

- 1) Patna-Motihari-Baitalpur Branch Pipeline.
- 2) Pipeline Replacement (BKPL).
- 3) Augmentation of Paradip–Haldia–Durgapur LPG Pipeline and its extension up to Patna and Muzaffarpur.
- 4) Motihari-Amlekhgunj Pipeline Project (in the State of Bihar).
- 5) 18 “Haldia-Barauni Pipeline (in the State of Bihar).”

Construction office Barauni,
Pipelines Division, Indian Oil Corporation Limited,
B.K.P.L. Head Quarter,
Post- Barauni Oil Refinery,
Dist.- Begusarai, Bihar-851114”

Shri Jagdish Prasad Singh
Joint Secretary (Retired), Bihar Administrative Service
Competent Authority
Augmentation of Paradip- Haldia - Durgapur Pipeline
and its extension upto Patna and Muzaffarpur Project,
Haldia-Barauni Pipeline Systems Project,
Motihari-Amlekhgunj Pipeline Project,
Patna-Motihari-Baitalpur Pipeline Project and
Muzaffarpur-Gorakhpur Pipeline Project,
Indian Oil Corporation Limited
Construction Office ERPL, Patna,
House no. 260, Patliputra Colony,
Near Shiv Mandir, Gosain Tola Patna 800013

Shri Bhubneshwar Mishra
 Additional Secretary (Retired)
 Bihar Administrative Service
 Competent Authority
 Augmentation of Paradip- Haldia - Durgapur Pipeline
 and its extension upto Patna and Muzaffarpur Project,
 Haldia-Barauni Pipeline Systems Project,
 Motihari-Amlekhgunj Pipeline Project,
 Patna-Motihari-Baitalpur Pipeline Project and
 Muzaffarpur-Gorakhpur Pipeline Project,
 Construction office Barauni,
 Pipelines Division, Indian Oil Corporation Limited,
 B.K.P.L. Head Quarter,
 Post- Barauni Oil Refinery,
 Dist.- Begusarai, Bihar-851114

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1549.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962, (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में तारीख 1 अक्टूबर से 7 अक्टूबर, 2017 को भारत के राजपत्र (साप्ताहिक) में प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2347, 29 सितम्बर 2017 में निम्नलिखित रूप से संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की अनुसूची में

"श्री गोपाल चन्द्र मुखर्जी
 डब्लु. बी. सी. एस. (प्रशासनिक) अवकाश प्राप्त
 सक्षम अधिकारी
 इंडियन ऑयल कॉर्पोरेशन लिमिटेड
 पारदीप - हल्दिया- दुर्गापुर एलपीजी पाइपलाइन एवं
 पारदीप - हल्दिया- बरौनी पाइपलाइन ऑगमेंटेशन योजना
 डाकघर - दुईल्या, आन्दुल - मौरी, मौरीग्राम
 हावड़ा - 711 302 (पश्चिम बंगाल)"

शब्दों और अंकों के स्थान पर

"श्री गोपाल चन्द्र मुखर्जी
 डब्लु. बी. सी. एस. (प्रशासनिक) अवकाश प्राप्त
 सक्षम अधिकारी
 इंडियन ऑयल कॉर्पोरेशन लिमिटेड
 पारदीप - हल्दिया- दुर्गापुर पाइपलाइन परियोजना,
 पारदीप - हल्दिया- दुर्गापुर पाइपलाइन का संवर्धन
 तथा पटना और मुजफ्फरपुर तक इसका विस्तार परियोजना,
 हल्दिया - बरौनी पाइपलाइन सिस्टम्स परियोजना एवं
 पारदीप- हल्दिया - सोमनाथपुर पाइपलाइन परियोजना,

डाकघर - दुईल्या, आन्दुल - मौरी, मौरीग्राम
हावड़ा - 711 302 (पश्चिम बंगाल)"

पढ़ा जाए ।

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[फा. सं. आर-11025(11)/15/2018-ओआर-I/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1549.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas. S.O. No 2347 dated 29 September 2017, published in the Gazette of India (Weekly) from 1 October to 7 October, 2017 namely:—

In the Said Notification, for the numbers and words,

“Shri Gopal Chandra Mukherjee

W.B.C.S. (Exe.) Retd.

Competent Authority

Indian Oil Corporation Limited

Paradip - Haldia- Durgapur LPG pipeline and

Augmentation of Paradip- Haldia- Barauni pipeline,

P.O. Duilya, Andul - Mouri, Mourigram,

Howrah - 711 302 (West Bengal) "

the numbers and words

“Shri Gopal Chandra Mukherjee

W.B.C.S. (Exe.) Retd.

Competent Authority

Indian Oil Corporation Limited

Paradip - Haldia- Durgapur Pipeline Project,

Augmentation of Paradip- Haldia - Durgapur Pipeline

and its extension upto Patna and Muzaffarpur Project,

Haldia-Barauni Pipeline Systems Project and

Paradip-Somnathpur-Haldia-Pipeline Project,

P.O. Duilya, Andul - Mouri, Mourigram,

Howrah - 711 302 (West Bengal)"

shall be substituted.

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2018

का. आ. 1550.— केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में अधिकार के उपयोग का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ 1 में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ 2 में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के संबंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात्:—

अनुसूची

प्राधिकारी का नाम और पता (1)	अधिकारिता का क्षेत्र (2)
श्री सुरेन्द्र सिंह - II, उप जिलाधिकारी आगरा सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, उत्तरी क्षेत्र पाइपलाइन्स मथुरा - टूंडला पाइपलाइन का संवर्धन तथा बरौनी - कानपुर पाइपलाइन (बीकेपीएल) के गौरिया टी पॉइंट से इसका जुड़ाव परियोजना, ई-160, प्रथम और द्वितीय तल, कमला नगर, आगरा (उत्तर प्रदेश)-282004	उत्तर प्रदेश राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-11025(11)/15/2018-ओआर-I/पी-26729]

पवन कुमार, अवर सचिव

New Delhi, the 25th October, 2018

S.O. 1550.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the area mentioned in column (2) of the Schedule:—

SCHEDULE

Name and address of the Authority (1)	Area of jurisdiction (2)
Sh. Surendra Singh -II, Deputy Collector Agra Competent Authority, Indian Oil Corporation Limited, Northern Region Pipelines Augmentation of Mathura-Tundla Pipeline and its extension for hook-up with Barauni-Kanpur Pipeline (BKPL) at Gawria T-Point Project, E-160, 1 st and 2 nd Floor, Kamla Nagar Agra (Uttar Pradesh) – 282 004	State of Uttar Pradesh

This notification is applicable from the date of issue.

[F. No. R-11025(11)/15/2018-OR-I/P-26729]

PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1551.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 14/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8.10.2018 को प्राप्त हुआ था।

[सं. एल-17011/4/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th October, 2018

S.O. 1551.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management, M/s. Life Insurance Corporation of India and their workmen, which was received by the Central Government on 8.10.2018.

[No. L-17011/4/2012- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 27th August, 2018

Reference: (CGITA) No. 14/2013

The Sr. Divisional Manager,
Life Insurance Corporation of India,
E&IR, Ahmedabad Divisional Office,
Jivan Prakash Building,
Tilak Marg, Post Box No. 277,
Ahmedabad (Gujarat)

... First Party

V/s

Shri Punambhai Dhulabhai Patani,
C/o General Secretary,
Gujarat Mazdoor Union, 71, Patel Chambers,
National Highway No. 8, Bapunagar,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia
For the Second Party : Shri Gordhan Prajapati

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17011/4/2012-IR(M) dated 30.01.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sr. Divisional Manager, Life Insurance Corporation of India, Ahmedabad in terminating the services of Shri Poonambhai Dhulabhai Patani w.e.f. 27.09.2003 is legal and justified? What relief the workman is entitled to?”

1. The reference dates back to 30.01.2013 and received on 11.02.2013 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The second party workman Poonambhai Dhulabhai Patani submitted the statement of claim Ex. 7 alleging that he joined Life Insurance Corporation of India, Vasna Branch in the year 2002 and has been performing his duty continuously till 06.10.2003. He worked for more than 240 days in a year in a permanent nature on a last drawn salary of Rs. 4177/- per month. His working hours were from 10:00 AM to 05:00 PM but his services were terminated on 07.10.2003 without assigning any reason. He served notice to Life Insurance Corporation of India regarding his termination but to no result. Therefore, he raised the dispute before the Central Labour Commissioner. Thus on the basis of the aforesaid averments, he has prayed for seeking declaration of his termination as improper, unfair and against the principle of natural justice.
3. The first party Life Insurance Corporation of India vide his written statement Ex. 8 denied the averments made in the statement of claim and submitted that the reference is bad in law, not maintainable and barred by delay and laches being filed after more than 10 years. He was appointed for a fixed period of 340 days in four instalments from 18.10.2002 to 10.01.2003 for 85 days at the monthly wages of Rs.2790/- vide letter Ex. 11 dated 26.06.2002, from 19.01.2003 to 09.04.2003 for 85 days on the same salary vide letter Ex. 14 dated 27.01.2003, from 15.04.2003 to 08.07.2003 for 85 days on the same salary vide letter Ex. 17 dated 28.04.2003 and from 14.07.2003 to 06.10.2003 for 85 days on the same salary vide letter Ex. 20 dated 18.07.2003. After the expiry of the said contract appointment, his services were automatically seized. Therefore, the case of the workman does not covered under Section 2 (oo)(bb) of the Industrial Disputes Act and therefore the prayer sought by the second party workman was liable to be rejected and secondly, his services were terminated on 27.09.2003 but he raised the dispute after a lapse of 10 years as the reference has been made on 30.01.2013 and no explanation has been given by the workman regarding the delay and laches.
4. The first party has not submitted any documents as a proof regarding his appointment and claims made in the statement of claim while the first party Life Insurance Corporation of India submitted the documents i.e. appointment letter Ex. 11 which shows that the second party workman was appointed from 18.10.2002 to 10.01.2003, appointment letter Ex. 14 which shows that the second party workman was appointed from 19.01.2003 to 09.04.2003, appointment letter Ex. 17 which shows that the second party workman was appointed from 15.04.2003 to 08.07.2003 and appointment letter Ex. 20 which shows that the second party workman was appointed from 14.07.2003 to 06.10.2003 thus for a total period of 340 days as a fixed term appointment. The papers Ex. 12 and 13 shows that he joined on 18.10.2002, papers Ex. 15 and 16 shows that he joined second time on 15.01.2003, papers Ex. 18 and 19 shows that he joined third time on 15.04.2003 and papers Ex. 21 and 22 shows that he joined fourth time on 14.07.2003.
5. On the basis of the pleadings, the following issues arise:
 - I. Whether the action of the management of Sr. Divisional Manager, Life Insurance Corporation of India, Ahmedabad in terminating the services of Shri Poonambhai Dhulabhai Patani w.e.f. 27.09.2003 is legal and justified?
 - II. To what relief, if any, the concerned workman is entitled to?
6. Both these issues are interrelated, therefore, are decided together.
7. **Issue No. I and II:** The burden of proof of these issues was lying on the workman who submitted his affidavit Ex. 9 wherein he has reiterated the averments made in the statement of claim and has not said anything contrary in his cross-examination. The first party LIC has not led any evidence. The advocate for the first party also submitted the written arguments Ex. 25.
8. The arguments of learned counsels of both the parties are heard and I considered the evidences lead by the parties. The main contention of the first party LIC is that this workman was appointed on fixed term basis as said earlier that he was appointed as peon in the first party Life Insurance Corporation of India, Ahmedabad, hereinafter referred to as “LIC” as a peon vide its letter no. TP/PH/OBC/588 dated 26.10.2002 for a period of 85 days from 18.10.2002 to 10.01.2003, vide its letter no. TP/PH/OBC/588 dated 27.01.2003 for a further period of 85 days from 19.01.2003 to 09.04.2003, vide its letter no. TP/PH/OBC/588 dated 28.04.2003 for a further period of 85 days from 15.04.2003 to 08.07.2003 and vide its letter no. TP/PH/OBC/588 dated 18.07.2003 for a further period of 85 days from 14.07.2003 to 06.10.2003, thus total for 340 days which are enclosed as Ex. 11, 14, 17 and 20. Therefore, the discontinuation of service of this workman after expiry of period of fourth term will not amount to retrenchment. For the controversy involved and contentions convinced, the question emerges as to whether the termination of the workman was a retrenchment to attract the provisions of Section 25 F or as to whether it falls within the exception and per view of Section 2 (oo)(bb) to rule out the retrenchment.

9. Section 2 (oo)(bb) reads as under:

“2(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include —

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.”

In Karnataka Handloom Development Corporation Ltd. V/s Shri MahadevaLaxmanRaval, 2006 (13) SSC 15, the Hon’ble Supreme Court held that the termination of contractual employee would not attract Section 25 F. In that case, the letter of appointment produced on record categorically stated, as in the present case, that the respondent’s appointment with the Corporation was purely contractual for a fixed period. The court observed that it is not as if no period was indicated and the only indication was the temporary nature of engagement. Therefore, the position of law highlighted that once the terms and conditions of the appointment reflected from the appointment order indicates specific period, then the employee would not be working for the purpose of Section 25 F, but one employed on contract basis only. Section 2(oo) of the Act is not attracted as soon after the expiry of specific period. The services would be liable to be discontinued. The appointee would lose his right to continue beyond the period contemplated in this contractual appointment. The case would fall under Section 2(oo)(bb). In Gangadhar Pillai V/s Siemens Limited, 2007 (1) SCC 533, it was observed by the Apex Court that the termination of service, in case falling under Section 2 (oo)(bb), would not unnecessarily lead to any inference that it was actuated by malice.

In Punjab State Electricity Board (supra), the facts before the Supreme Court were that the respondent was appointed as peon on daily-wage and his appointment was shown to be of temporary character and it was from 08.01.1988 up to 29.02.1988. On 07.03.1988, his appointment was extended on the same terms and conditions. Similar extensions were thrice granted thereafter. The Hon’ble Supreme Court held that the employment being specific/fixed term and the engagement of the workman being conditional and for specific period, which was indicated in the appointment order, his case was squarely covered by Section 2(oo)(bb) and Section 25 F would be inapplicable. Also in Kishore Chandra Samal (supra), the facts were akin to the facts of the present case. In that case, the applicant was appointed as Junior Typist and was engaged for various spells of fixed periods from July 1982 to August 1986. In all orders of engagement, specific period was mentioned. It was held that the case was covered by Section 2 (oo)(bb). The Apex Court affirmed the order of the High Court, quashing the reinstatement.

10. The Gujarat High Court in GEB V/s Harish Kumar N. Bosamiya 2014 (143) FLR 373, also following the aforesaid laws has held that discontinuation of workman on expiry of contract period would not amount to be a retrenchment and such case stands covered under Section 2 (oo)(bb) even completing 240 days of service in two spans and Gujarat High Court in the said case set aside the award of reinstatement passed by the Labour Court. The observations of the Gujarat High Court are reproduced as under:

“The orders of appointment of the respondent-workman were demonstrative that his engagement was temporary and time-bound. It may be true that the engagement of the respondent was repeated, but on each occasion, it was the appointment for fixed period. As already noted, the first order dated 28.02.1989 specified temporary engagement for a period of fifty eight days and subsequent orders too provided for a date up to which, the engagement was to last. In other words, fixed period was indicated. The last order was dated 17/18.08.1989, in which, it was stipulated that it was up to 31.12.1989. Hence, on every occasion of appointment, period was indicated. After the said last order and the period provided there under having expired, the services of the workman was not retained and were not continued.

Each order of appointment reflected contract of employment, wherein there was a stipulation about expiry of the contract. The services were terminable at the end of specified period. This being the position manifested from the orders of appointment, it was clearly established from the said materials on record that the engagement of the workman was for a specific period. When his services were not continued at the end of the period specified in the last appointment order, it did not constitute retrenchment within the meaning of Section 25 F and his case stood covered under exception as contemplated in Section 2 (oo)(bb) of the act. It was clear that the completion of 240 days of service or otherwise was an aspect rendered irrelevant.

The decisions relied upon by learned Advocate for the respondent may be adverted to. In Surendra Kumar Verma (supra), it was emphasised that the Labour Law should be given broad interpretation. It was held that for the purpose of continuous service, the workman must have worked for at least 240 days in one year and it is not necessary that he has been in continuous service for one year. This decision hardly applies to the point involved in the present case. Similarly, a decision in AnoopSharma (supra) was relied upon by learned advocate for the

respondent to the effect of non-compliance of clauses (a) and (b) of Section 25 F, the Hon'ble Supreme Court held that non-compliance of the said provisions would render retrenchment nullity. The Hon'ble Supreme Court restored the award of the Labour Court and directed reinstatement with payment of back wages. At the cost of repetition, it may be stated that in the instant case, on facts, one it was found that the case fell under Section 2 (oo)(bb), the question of breach of Section 25 F did not arise. The decision in Anoop Sharma (supra) has, therefore, no applicability.

Learned Advocate for the respondent tried to contend that since the appointments were extended in repeat, it could not be viewed as fixed time so as to attract Section 2 (oo)(bb) of the act. As already noted, each order of appointment was capable of being viewed as independent contract of service specifying the fixed term for engagement. The fact remained that the orders of such nature were passed more than once by itself could not lead to a conclusion that the employer wanted the workman to continue permanently. There was nothing to indicate that even term appointment was given as a cloak, whereas the engagement was of a permanent kind. It was open to the employer to issue such orders contracting with the workman for appointing him for a specific period. It was not that the workman continued for long years in the guise of fixed term appointment, in which event, in a given case, the inference of Section 2 (oo)(bb) may be drawn by the court. The facts of the case do not reflect such a situation.

Merely because the engagement of the workman was extended, it could not robe off the character of fixed term appointment. The services of the workman were not continued beyond 31.12.1989 which was non-renewal of contract of service and was already specified up to that date in the order of appointment. The contention that the workman was entitled to relaxation in the age, therefore also, is of no avail in view of above factual premise of the case and the legal position discussed above.

For the foregoing reasons, when the termination of the services of the workman found to be falling within the umbrella of Section 2 (oo)(bb), the findings of the Labour Court regarding breach of Section 25 F was not well conceived in law. It was an erroneous finding in eye of law and could not be sustained."

11. Thus in the light of the aforesaid discussions, both the issues are decided in negative and against the second party workman. The workman is not entitled to get any relief.
12. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1552.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स अल्ट्राटेक सीमेंट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 16/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8.10.2018 को प्राप्त हुआ था।

[सं. एल-29012/25/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1552.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2018) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the Manager, M/s. Ultratech Cement Limited and their workmen, which was received by the Central Government on 8.10.2018.

[No. L-29012/25/2017- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM -LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,

Dated 27th August, 2018

Reference: (CGITA) No. 16/2018

The Director,
M/s. Ultratech Cement Ltd.,
(Unit Sewagram Cement Works),
Village – Vayor, Taluka – Abdasa,
Kutch (Gujarat) – 370511

...First Party

V/s

Shri Pradeep Sharma & Others,
C/o Param Milk & Juice Center,
Village - Vayor, Taluka – Abdasa,
Kutch (Gujarat) – 370511

...Second Party

For the First Party : Shri K.H. Patel

For the Second Party : Shri Prabhatsinh Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-29012/25/2017–IR(M) dated 16.02.2018 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Ultratech Cement Ltd., Abdasa in violating the terms and conditions of employment as well as discrimination between these 5 (five) concerned workmen and other permanent workmen regarding non-payment of Dearness Allowance (DA) and various other benefits, is legal, proper and justified? If not, what relief these concerned workmen are entitled to and to what extent?”

1. The reference dates back to 16.02.2018 and received on 05.03.2018 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After filing statement of claim and written statement by the respective parties and the case was fixed for evidence and also fixed for hearing of the application Ex. 7, both the aforesaid parties submitted the settlement Ex. 11 for seeking award in the light of the settlement Ex. 11.
3. Thus the reference is finally disposed of in the light of the settlement Ex. 11. The award is passed accordingly. The settlement Ex. 11 shall remain the part of award.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1553.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 744/2004, 742/2004, 743/2004, 745/2004, 746/2004, 747/2004 एवं 763/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8.10.2018 को प्राप्त हुआ था।

[सं. एल-30012/79/2001-आईआर (एम),
सं. एल-30012/83/2001-आईआर (एम),
सं. एल-30012/86/2001-आईआर (एम),
सं. एल-30012/82/2001-आईआर (एम),
सं. एल-30012/78/2001-आईआर (एम),
सं. एल-30012/81/2001-आईआर (एम),
सं. एल-30012/84/2001-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1553.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 744/2004, 742/2004, 743/2004, 745/2004, 746/2004, 747/2004 and 763/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of, M/s. Indian Oil Corporation Limited and their workmen, which was received by the Central Government on 8.10.2018.

[No. L-30012/79/2001- IR(M),
No. L-30012/83/2001- IR(M),
No. L-30012/86/2001- IR(M),
No. L-30012/82/2001- IR(M),
No. L-30012/78/2001- IR(M),
No. L-30012/81/2001- IR(M),
No. L-30012/84/2001- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 31st August, 2018

Reference: (CGITA) No. 744/2004

The Group General Manager (Projects),
ONGC Ltd.,
Ankleshwar Project,
Ankleshwar (Gujarat) – 393010

...First Party in Reference (CGITA) Numbers:
744/2004, 742/2004, 743/2004, 745/2004,
746/2004, 747/2004 & 763/2004

V/s

1. Shri Ganpat R. Rathod,
At & Post Juna Diva, BharwadFaliya,
Taluka Ankleshwar,
Bharuch (Gujarat)

...Second Party in Reference (CGITA)
No. 744/2004

- | | | |
|----|--|--|
| 2. | Shri Mohan C. Vasava,
Alipura-Matariya,
Talav, Bharuch (Gujarat) | ...Second Party in Reference (CGITA)
No. 742/2004 |
| 3. | Shri Haresh J. Patel,
TalpatFaliya, ShukalTirth,
Bharuch (Gujarat) | ...Second Party in Reference (CGITA)
No. 743/2004 |
| 4. | Shri Ibrahim A. Patel,
At & Post Piraman Road,
Taluka Ankleshwar,
Bharuch (Gujarat) | ...Second Party in Reference (CGITA)
No. 745/2004 |
| 5. | Shri Dalpat B. Parmar,
At.Boridra, Post Kharchi,
Taluka Jagadia,
Bharuch (Gujarat) | ...Second Party in Reference (CGITA)
No. 746/2004 |
| 6. | Shri Siraj M. Sha,
At & Post Digas, Tehsil Hasot,
Bharuch (Gujarat) | ...Second Party in Reference (CGITA)
No. 747/2004 |
| 7. | Shri Vinod N. Patel,
Ranchod Krupa Society,
R.N. 55, Post Adada, Taluka Ankleshwar,
Bharuch (Gujarat) | ...Second Party in Reference (CGITA)
No. 763/2004 |

For the First Party in All References : Shri C.S. Naidu

For the Second Party in All References : Shri K.V. Vyas

AWARD

Reference (CGITA) No. 744/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/79/2001–IR(M) dated 08.11.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Ganpat R. Rathod, Khalasi, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

Reference (CGITA) No. 742/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/83/2001–IR(M) dated 13.11.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Mohan C. Vasava, Khalasi, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

Reference (CGITA) No. 743/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/86/2001–IR(M) dated 13.11.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Haresh J. Patel, Khalasi, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

Reference (CGITA) No. 745/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/82/2001–IR(M) dated 13.11.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Ibrahim A. Patel, Fitter, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

Reference (CGITA) No. 746/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/78/2001–IR(M) dated 08.11.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Dalpat B. Parmar, Khalasi, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

Reference (CGITA) No. 747/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/81/2001–IR(M) dated 08.11.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Siraj M. Sha, Khalasi, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

Reference (CGITA) No. 763/2004

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/84/2001–IR(M) dated 21.01.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Shri Vinod N. Pate, Fitter, Reservoir Section w.e.f. 01.10.1991 is legal, proper and justified? If not, to what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

1. The Reference (CGITA) No.744/2004 dates back to 08.11.2001, Reference (CGITA) Numbers 742/2004, 743/2004 & 745/2004 dates back to 13.11.2001, Reference (CGITA) Numbers 746/2004 & 747/2004 dates back to 08.11.2001 and Reference (CGITA) No. 763/2004 dates back to 21.01.2001. The Reference (CGITA) Numbers 742/2004 to 747/2004 received on 10.12.2001 and Reference (CGITA) No. 763/2004 received on 26.02.2002 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. The brief facts all the references in their statement of claim are that all the workmen in the aforesaid references were working with the first party The Group General Manager (Projects), ONGC Ltd., Ankleshwar Project, Ankleshwar as Khalasi and Fitter since 1990 in its Reservoir Sections. They worked sincerely and diligently for more than 240 days without giving any opportunity of complaint but their services were terminated on 01.10.1991 orally without assigning any reason. They were paid Rs.887/- per month as last wages. They also preferred writ petition no. 8811/1991 before the Hon'ble Gujarat High Court which directed them to raise Industrial Disputes before the proper forum and as the reconciliation before the Assistant Labour Commissioner (Central) failed, the Government of India send these references to this Tribunal for adjudication. It is further alleged that all the workmen served for more than 240 days under the direct control of the first party The Group General Manager (Projects), ONGC Ltd., Ankleshwar Project, Ankleshwar. Provident fund was not deducted by the first party; therefore, a complaint was made on 22.11.1991 to Regional Provident Fund Commissioner. They were denied the facility of leaves, medical facility, bonus etc. All the workmen worked for more than 240 days being entitled for regularisation but their termination of service amounts to illegal labour practice and makes their termination as unjust and illegal as they were not explained as to why their services were terminated. They tried to search alternative job but failed. Thus they have prayed for reinstatement with full back wages since 01.10.1991 with continuity of service and other benefits.
3. The first party submitted the written statements in all the references submitting that the disputes are outside the purview of the jurisdiction of the Tribunal because they admitted before the Assistant Labour Commissioner that they worked in reservoir section of ONGC Ankleshwar as temporary contractual labour. This is also a truth that they were contractual labour governed by Contract Labour (Regulation and Abolition) Act, 1970. Therefore, the Tribunal has no jurisdiction to adjudicate the matter as being not maintainable and the reference does not fall within the purview of Section 2 (k) of the Industrial Disputes Act and the persons involved in the reference are not workmen under Section 2 (s) of the Industrial Disputes Act. There was no master servant relationship between the second parties and ONGC as they were engaged by the contractor. The reference is also bad for non-joinder of the contractor as party. Thus the reference is liable to be dismissed.
4. The then Presiding Officer of this Tribunal on 21.01.2013 passed an order on the applications Ex. 23 and 24 moved by the so called second party workmen for consolidating all the aforesaid references i.e. Reference (CGITA) Numbers 742/2004, 743/2004, 745/2004, 746/2004, 747/2004 and 763/2004 with Reference (CGITA) No. 744/2004. The said applications were allowed and all these references were consolidated in Reference (CGITA) No. 744/2004.
5. On the basis of the pleadings, the following issues arise:
 - I. Whether the action of the management of ONGC Ltd., Ankleshwar in terminating the services of Ganpat R. Rathod worked as Khalasi, Mohan C. Vasava worked as Khalasi, Haresh J. Patel worked as Khalasi, Ibrahim A. Patel worked as Fitter, Dalpat B. Parmar worked as Khalasi, Siraj M. Sha worked as Khalasi and Vinod M. Pate worked as Fitter in Reservoir Section w.e.f. 01.10.1991, is legal, proper and justified?
 - II. To what relief, if any, the concerned workman is entitled to?
6. Both these issues are interrelated, therefore, are decided together.
7. **Issue No. I and II:** The burden of proof of these issues was lying on the second party workmen. The second party submitted the affidavits of all the workmen namely Ganpat R. Rathod worked as Khalasi, Mohan C. Vasava worked as Khalasi, Haresh J. Patel worked as Khalasi, Ibrahim A. Patel worked as Fitter, Dalpat B. Parmar worked as Khalasi, Siraj M. Sha worked as Khalasi and Vinod M. Pate worked as Fitter wherein they have reiterated the averments made in the statement of claim. Ganpat R. Rathod in his cross-examination has stated that he was 55 years old at the time of his cross-examination on 02.05.2011. He was not issued any appointment letter by ONGC. He cannot explain as to why he raised the dispute after a lapse of 10 years. He did

not try to search any job. He has failed to explain as to how he sustained his family. Vinod M. Pate, Haresh J. Patel, Mohan C. Vasava, Ibrahim A. Patel, Dalpat B. Parmar and Siraj M. Sha reiterated in his cross-examination whatever has been stated by Ganpat R. Rathod in his cross-examination.

8. The first party examined one Rash Behari Sinha *vide* affidavit Ex. 20 who reiterated the averments made in the written statement and more specifically stated that these workmen were working on job contract for a short period intermittently on fixed period basis. After the cessation of the tenure, they were not engaged by ONGC. All of them did not complete 180 working days. The first party has also examined Pushkar Bisht *vide* affidavit Ex. 23 wherein he has stated on oath that ONGC erstwhile Oil and Natural Gas Commission of the Government of India, is now a company of the Government of India, registered under the Companies Act, 1956. It has its own rules and regulations relating to recruitment, promotion and other service conditions of its employees which have a statutory force. Hence all appointments are to be appointed as contingent/casual hands, their names are to be first sponsored by the employment exchange. They are to be appointed on term basis and issued appointment letter on their appointment as per the Administrative/Executive instructions of ONGC. Further a record of register is to be maintained in respect of those contingent workers who had put in one year continuous services in ONGC and their cases are considered for regular posts as and when vacancies arise after following the prescribed procedure laid down in R & P regulation. Their service conditions are for contingent employees of the Oil and Natural Gas Corporation. Therefore, if any person is to be appointed or engaged by ONGC, either against a regular post or against a casual vacancy, it should be only in accordance with the rules prevailing in the corporation and not otherwise. The first party also stated that the requirement of the employees by the corporation is regulated by statutory regulation, i.e. Oil and Natural Gas Corporation (R&P) Regulation 1980 which is produced by ONGC by separate list. The corporation is required to follow the procedure prescribed under the regulation for filling up the vacancies. The first party further stated that the concerned workmen were engaged for fixed period and accordingly Ganpat R. Rathod from 01.02.1990 to 30.04.1990, Haris J. Patel from 01.04.1990 to 30.06.1990, Dalpat B. Parmar from 01.04.1990 to 30.06.1990, Ibrahim Ahemad Patel from 02.01.1989 to 31.03.1989, Mohan C. Vasava from 01.05.1989 to 30.06.1989, Shiraj A. Sha from 01.02.1990 to 30.04.1990 and thereafter these workers were never appointed by ONGC at any point of time. In his cross-examination, he has not stated contrary to his examination-in-chief.
9. The first party has submitted the copy of the Modified Recruitment and Promotions Regulations 1980 *vide* Ex. 25 and also the original copies of employment on contract basis of all the aforesaid workmen *vide* Ex. 26 to 31. These contracts state as under: "I am prepared to work at a monthly rate of Rs.708.24/Rs.669.24. I further certify that I have not worked in the commission previously and if at a later date if it is found that I had worked in any sections of ONGC, my services may be terminated without any notice and I will not prefer any claim. I further state that I will not claim any employment in the ONGC on the basis of the work done by me as per this agreement. I understand that my office hours will be the same as applicable to other regular employees of the ONGC. I shall not refuse to work beyond this time if sometimes it is necessary to do so for work without claiming any extra amount/remuneration for the same."
10. I heard the arguments of learned counsel of both the parties and considered the evidence lead by both the parties. The evidence reveals that all these workmen were engaged on contract basis on 01.02.1990 and were discharged on 01.10.1991 orally. It is an admitted fact that all these workmen were not appointed on any post in ONGC whatsoever through a due process of recruitments rules i.e. Modified Recruitment and Promotions Regulations 1980. Thus on the basis of the applications of all the workmen, these persons cannot be said to be casual or regular employee. It is also noteworthy that all these workmen have crossed the eligibility age of recruitment to any post in ONGC and some of them have already passed the superannuation age.
11. The second party relied on Deepali Gundu Surwase V/s Kranti Junior Adayapak and others, 2013(139) FLR 541 wherein the apex court has held that if action taken against the employee by the employer found to be ultravires of the relevant statutory provisions or principles of natural justice, such action cannot be said to be justified but in this case, the undertaking and contract executed by the workmen reveals that they were engaged for 90 days and they themselves in their applications stated that on the basis of this engagement, they will not claim any employment in ONGC on the basis of work done by them as per this agreement. Thus this agreement itself is an estoppel against the workmen for seeking any relief.
12. The second party further relied on Harjinder Singh V/s Punjab State Warehousing Corporation, 2010 (3) SC C 192, which has no relevance with this case. They further relied on Letters Patent Appeal No. 2290/2010, Bhavnagar Municipal Corporation V/s Dharmendra B. Vegad, wherein the Gujarat High Court has held that the provisions of the Limitation Act do not apply in the Industrial Disputes. Thus on this very ground, the reference cannot be said to be time barred.
13. The second party further referred Agriculture Produce Market Committee V/s Kanubhai Laxmanbhai Patel, 2009 (2) LLJ 41 Guj., wherein it has been held that the benefit of Section 25 (h) cannot be denied to retrenched workmen on the ground that their appointment was not regular or there was no sanctioned post but in this case, the workmen themselves have giving undertaking that their services may be terminated at any time without any notice and they will not prefer any claim or claim of employment in ONGC on the basis of the work done as per

their agreement. Secondly, the workmen have failed to prove that there were vacant sanctioned posts at the time of their oral termination of contract employment. They have further referred Devinder Singh V/s Municipal Counsel, Sanaur, 2011 (6) SC C 583, wherein the Supreme Court reiterated the ratio of Umadevi Case wherein it was held that persons appointed on contractual basis without following the procedure for regular recruitment cannot be regularised into permanent or regular service but has observed as under: "The appellant was appointed on six-monthly contracts from 02.05.1995, then from 01.11.1995 and lastly from 01.05.1996 for six months i.e. till 31.10.1996, by resolutions passed by the Municipal Council from time to time. He was terminated without complying with Section 25 F of the Industrial Disputes Act on 30.09.1996 i.e. one month before his contract would have expired. Could not the respondent Municipal Council have simply (a) let the contract expire in the first place, by waiting for another month, if it did not require the appellant's services any longer or (b) alternatively, have reinstated him for one month, since that is all that the appellant was entitled to upon reinstatement." The agreement reveals that these workmen were initially engaged on 01.02.1990 to 30.04.1990 but were permitted to continue till 01.10.1991 when they were terminated orally without giving any notice. Thus on the basis of the aforesaid law, these workmen at the most may be said to be entitled for one month wages i.e. Rs.887/- plus admissible dearness allowance if any.

14. The first party advocate has not referred any judgement of higher courts but has argued that they were contract employees on a fixed term basis but he has failed to explain as to why they were permitted to continue in the employment after 30.04.1990.
15. It is noteworthy that these workmen have either surpassed the age of superannuation or likely to attain the age of superannuation, therefore, no further relief of reinstatement can be given as their appointments was de-hors the recruitment rules. However, as a principle of equity and justice, each of these workmen namely Ganpat R. Rathod, Mohan C. Vasava, Haresh J. Patel, Ibrahim A. Patel, Dalpat B. Parmar, Siraj M. Sha and Vinod M. Pate may be given a lump-sum compensation of Rs.10000/- (Rupees Ten Thousand) within 60 days from the publication of this award.
16. The finding of issues and the award is passed accordingly. The copy of the award shall be placed on each file.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1554.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 20/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-30011/49/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of, M/s. Indian Oil Corporation Limited and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-30011/49/2011- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B. Presiding Officer,

CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 20 of 2012.

In the matter of an Industrial Dispute between :—

The Management of I.O.C.L (AOD). Digboi, Assam.

...Management.

Vrs

The workmen represented by the General Secretary,

Mineral Oil Workers Union, IOCL(AOD), Digboi, Assam.

...Workman

APPEARANCES

For the Management : Mr. S. N.Sharma, Sr. Advocate

For the Workman. : Mr. K.M.Haloi, Advocate

Date of Award: 06.09.2018

AWARD

1. The present industrial dispute was referred by the appropriate Government vide order dated 02.05.2012 with the following schedule:

SCHEDULE

“Whether the action of the management of IOC(AOD), Digboi, in proposing change in the working hours and weekly off, vide their notice ERS.3/29(WH)-704 dated 6.12.2010, is legal and justified? What relief the workmen are entitled to?”

2. On receipt of the reference, notices were sent to the workmen as well as the management. They appeared and submitted their written statements.

3. The written statement submitted by the workmen represented by the General Secretary, the Mineral Oil Workers' Union, Indian Oil Corporation Ltd. (Assam Oil Division), Digboi, Assam may be summarized as follows. The Assam Oil Division of Indian Oil Corporation was originally a British Company named Assam Oil Company Limited which was acquired by the Government of India by an Act of the parliament called “The Burmah Oil Company (acquisition of shares of Oil India Limited and of the undertakings in India of Assam Oil Company Ltd. and the Burmah Oil Company (India Trading) Limited Act, 1981”, hereinafter referred to as the Act, 1981. The acquisition took place on 14.10.1981. Section 11 of the Act, 1981 provides that condition of service of the existing employees of the Assam Oil Company will remain same until and unless the service conditions are duly altered by the Central Government or the successor Government Company. The Act, 1981 came into force on 14.10.1981. It was further stated that the privilege and amenities granted to the different categories of employees of Assam Oil Company Ltd. are still in force in the Assam Oil Division though they are not available to the employees of other Divisions of the Indian Oil Corporation Ltd. In the Assam Oil Division of Indian Oil Corporation there are two set of employees namely Ministerial staff and non ministerial staff. Ministerial staffs are enjoying two days off after 5 days work and non ministerial staffs are enjoying two days off after 6 working days. The working hours of ministerial staff in a week is 36.25 hours and the working hours of the concerned non-ministerial staff in a week is 42 hours and this system of different categories of working hours have been continuing since long back from during the time of erstwhile Assam Oil Company Ltd. However a group of non-ministerial employees had been rendering service for 48 hours in a week with one day weekly off for which they are paid an additional 10% of basic pay as special allowance. It has also been stated that there are about 157 employees who are availing two days off after 6 working days. The management vide notice dated 06.12.2010 issued advance notice according to the provision of Section 9A of the I.D. Act, 1947 and stated that the management desire to change the existing working hours of 42 hours per week (6 days work with 2 days off) to 48 hours per week (6 days work with 1 day off). According to the Union the aforesaid notice as well as the intention of the management is illegal, unfair and arbitrary. According to the Union the fact that the employees who work 48 hours with one day off are given 10% of basic pay as special allowance naturally indicates that those workers are working in excess of normal working hours. It was further stated that the proposal of the management to implement equal hour of work among “unequals” is a clear violation of Article 14 of the Constitution of India and as such the action of the management in proposing the change of work hours is not justified. It was further stated that in absence of any alternative to provisions of Section 11 of the Act 1981 by way of amendment by the Parliament, the management of IOCL (AOD) cannot change the working hours of the concerned workmen. It was further stated that the aggrieved workmen have been sacrificing the 10% special allowance on their basic pay for their rest since the date of their joining and whether they would work for excess hours in lieu of extra payment should be an option left to the concerned workmen. The Union prayed to pass an Award in favour of the concerned workmen directing that the notice dated 06.12.2010 issued u/s 9A of the Industrial Dispute Act, 1947 is illegal and unjustified.

4. By submitting their written statement the management stated that after nationalization of the erstwhile Assam Oil Company the assets of the Company were vested with the Indian Oil Corporation Ltd. Assam Oil Company was retained as a separate division of the Indian Oil Corporation Ltd. (Assam Oil Division) namely, Refineries Division, Pipeline Division, Marketing Division, Research and Development Division and Assam Oil Division. It was further stated that all the employees of the IOCL are getting same pay scales and are guided by common Rules and Regulations in respect of working method and procedure. It was further stated that though IOCL (AOD) has been maintained as a separate Division yet vide a memorandum of Settlement dated 16.02.1985 it was agreed that the existing pay scale, job classifications, allowances, benefit and other terms and conditions incidental to employment of Assam Oil Company Ltd.

shall be substituted in entirety by pay scales, benefit, other terms and conditions etc. as applicable in the R & P Division of Indian Oil Corporation. Following the bifurcation of the R & P division into separate Refineries Division all employees of Assam Oil Division are following the pay scale benefit and other terms and conditions of Refineries Divisions and the Director of the Refineries Divisions is also the Director of Assam Oil Division. It was further stated that it was only in the fitness of things that the hours of work of Refineries Divisions are also followed in Assam Oil Division. It was also stated that in the memorandum of settlement executed at Guwahati consequent to the enactment of the Act, 1981 it was agreed that pay scale, job classification allowance, benefit and terms and conditions incidental to employment shall be substituted in entirety with pay scale benefits and other terms and conditions applicable in the R & P Division of IOCL. It was also stated in the said settlement that both parties agreed to rationalize the working hours keeping in view the working hours operating in R & P Division of Indian Oil Corporation. In their Written Statement the management quoted the clause 2.17 of the memorandum of settlement dated 16.02.1985 in respect of the working hours which reads as under :

“2.17.1 WORKING HOURS:

2.17.1 working hours for all categories of workman shall be rationalized keeping in view the working hours operating in R & P Division. Management and Union shall jointly endeavor to implement the change of working hours within three months from the date of this settlement”.

In order to standardize hours of work of IOCL (AOD) the management issued a Notification u/s 9A of the I.D. Act on 06.12.2010 and by the said notice management revealed its intention to effect the proposed change of service condition by giving 21 days prior notice thereby complying with the statutory provision laid down under the I D Act, 1947. Majority of the shift workers in IOCL (AOD) are following 48 hours per week (6 days work with 1 day off). Only some of the shift workers primarily working in Production Department, P & U Department of Digboi refinery are working under different hours of work schedule having 42 hours per week (6 days work with 2 days off). It was further stated that the IOCL has only two sets of working hours applicable to its employees namely, (i) 36.25 hours per week for Ministerial Staff, (ii) 48 hours per week for non Ministerial staff. However in Assam Oil Division, three different sets of timings are being followed in few departments namely, (i) 36.25 hours per week for Ministerial staff, (ii) 42 hours per week for non Ministerial staff followed by about 135 shift employees only (about 14% of total non Ministerial staff) and (iii) 48 hours per week for non Ministerial staff followed by about 815 employees (about 86% of total non Ministerial staff). It was further stated that because of the aforesaid disparity in the hours of work per week there was resentment among large number of workmen working in the Refinery. By Clause 2.17 of the Settlement dated 16.02.1985 the Union agreed for rationalization of working hours in Refinery. However for the reason best known to the Union they did not agree to rationalization of the working hours in respect of those 135 workmen. Thereby having been compelled the management issued Notice u/s 9A of I. D. Act, 1947. By the said Notice all workmen were sought to be brought in 48 hours work per week (6 days work with 1 day off). According to the management the change sought to be brought in by the notice dated 06.12.2010 cannot be held to be illegal as it will bring equality of working hours among the workmen working in the Refinery since, otherwise, the 86% of workmen who are performing 48 hours work per week will always have a grievance about the working culture in the Refinery. Referring to paragraph 3 of the claim statement submitted by the workmen management stated that IOCL is the successor Government Company and by notification dated 13.10.1981 the Central Government notified u/s 9(1) of the Act of 1981 that Assam Oil Company Ltd. instead of being vested upon Central Government shall vest in the government Company known as the Indian Oil Corporation Ltd. with effect from 14.10.1981. According to the management, in view of the aforesaid Notification the erstwhile Assam Oil Company was vested with the Government Company i.e. IOCL and accordingly u/s 11(1) of the Act of 1981 the successor Government Company is authorized to alter the service conditions of the workers of IOCL (AOD). It was further stated that the allegation brought in paragraph-7 of the claim petition is not correct. According to the management 42 hours of work per week is not a normal work hour and in order to standardize hours of work in line with the Company's other Refineries the notification dated 06.12.2010 was issued. It was further stated that the concerned workmen who were the members of the Union in Tripartite agreement dated 16.02.1985 agreed to change of working hours. The management further stated that the Bipartite agreement was arrived at with the recognized Union on 09.01.2007 wherein both the management and the recognized Union agreed to adopt per week work schedule followed in other units of IOCL i.e. 48 hours per week schedule for all field battery area workers and 36.25 hours per week work schedule for all Ministerial staffs. It was further stated that the move of the management was not at all in violation of Article 14 of the Constitution of India. The intention of the management is to bring equality among the workers in respect of working hours. The management prayed for passing an award in favour of the management upholding the notice dated 06.12.2010 issued u/s 9A of the I. D. Act, 1947.

5. 10 witnesses were examined on behalf of the workmen side. Several documents were exhibited. Management side examined two witnesses. The examination in-chief of the workmen witnesses (submitted on affidavit) are more or less similar except their names and respective identity. Let me therefore summarize the evidence adduced by the witnesses of the workmen side during their examination-in-chief. It may be mentioned here that the examination-in-chief of 10 numbers of workmen witnesses were submitted on Affidavit. It was stated that acquisition of the erstwhile Assam Oil Company took place by the Act 1981 on 14.10.1981 where-after Assam Oil Company Ltd came under IOCL and was kept under particular Division named Assam Oil Division. According to the witnesses as per Section 11 of the Act.1981 only the Central Government or the successor Government Company can alter the service condition of the existing

employees of Assam Oil Company. The witnesses sought to describe the facts mentioned in the claim application and exhibited the notice issued by the management u/s 9A of the I. D. Act, 1947 as Exhibit-1. According to the witnesses the notice as well as intention of the management was illegal, unfair and arbitrary. It was also stated that when the matter was brought before the RLC (C), Guwahati it was made clear by the workmen that the change of working hours proposed by the management was not acceptable to them. It was also stated that by retaining the original working hours as was applicable to the employees of the erstwhile Assam Oil Company the concerned workmen have been sacrificing 10% of the basic pay as special allowance. It was also stated by the witnesses that in the event of change of working hours as proposed by the management by providing the concerned workmen 10% special allowance on their basic pay, IOCL will bear huge economic burden which will not be beneficial for the Public Sector Company.

6. During cross examination of W.W No.1 the management proved the Act, 1981 as Ext-A and the Notification dated 13.10.1981 as Exhibit-B by which the Central Government vested the Assam Oil Company to IOCL with effect from 14.10.1981. The witness also admitted that according to the Section 11 of the Act, 1981 the service of the employees were vested with the Central Government or the successor Government Company. He further admitted that in all the refineries under IOCL the employees are to work 48 hours in a week. W.W.1 also admitted that he joined the service in the year 1982 in the IOCL (AOD) and at the time of his joining his service was wholly under IOCL. He further admitted that in January, 2007 AOC Labour Union was the majority Labour Union. The witness during cross-examination further admitted that during the pendency of this reference a conciliatory settlement was arrived at between the management of IOCL (AOD) and the Union and the Memorandum of Settlement dated 30.09.2013 was exhibited as Exhibit-C. The witness further admitted that as per Section 9A of the I. D. Act, 1947 management can change the condition of service by giving 21 days prior notice. The W.W.2, during his cross-examination, stated that he joined the service on 12.3.1997. He further admitted that for changing the condition of the service of the workers in IOCL (AOD) the consent of Union is not necessary. From the cross-examination of W.W No.3 it appeared that he joined in IOCL (AOD) on 01.10.1989 and the remaining part of his cross-examination was in the similar line as that of WW.1 & 2. W.W.4 during cross-examination admitted that he was appointed in Indian Oil Corporation (Assam Oil Division) and not in Assam Oil Company and that in his Appointment letter (Exhibit-4) there is no mention that he was appointed as per the service condition of erstwhile Assam Oil Company. He further admitted during cross-examination that Assam Oil Company is a Refinery which is a Factory and it falls under the Factories Act. He also admitted that he along with other workers is getting benefit of Factories such as Overtime Allowance, medical facilities, canteen facilities, etc. He however stated that he did not know whether under Factory Act the working hours of a workman is 48 hours in a 6 days week i.e. 8 hours per day. He however, denied that though the dispute was raised by the Union, later the Union agreed to the terms and conditions of the settlement (Ext-C). W.W.5 during his cross-examination stated that he joined in the month of October, 1999 and their service conditions/service Rules are being changed from time to time. He also admitted that originally age of retirement was 58 years as per earlier Rules but at present the IOCL extended the age of retirement to 60 years without their consent and they have not objected to it. He further admitted that in the appointment letter there was no mention regarding the working hours. W.W.6 during his cross-examination stated that he joined in the Company on 16th January, 1989. He also admitted that by the Act, 1981 Assam Oil Company was acquired by Government of India on 14.10.1981 and thereafter the said Company was vested on Indian Oil Corporation Ltd. He further admitted that as per the Act, 1981 the service condition of those employees who were in service as on 14.10.1981, would remain same until and unless the new Company change the said service conditions. He further admitted that the Act 1981 is not applicable to him as he joined in the year 1989. During cross-examination he stated that taking into account last 3 months he had perhaps worked OT for 10 hours for which he got the OT allowance around double of hourly salary. He however denied the suggestion that because he along with other concerned workmen were getting extra money by working over-time, they do not like to work 48 hours per week like others. The workman witness No.7 was not tendered by the workmen side for cross-examination and hence, his evidence could not be considered. Workmen witness No.8 during cross-examination stated that workmen witness No.7 got promotion to the officer cadre. He also admitted that he did not enter the service under Assam Oil Company and joined in IOCL (AOD). W.W.9 during cross-examination stated that he joined in the year 1996. W.W. 10, during cross-examination, stated that since he joined in the year 1991 his service condition cannot be governed by 1981 Act.

7. The management witness No.1, Md. Numan Uddin who was working as Chief E.R. Manager, IOCL (AOD), deposed that after nationalization of the erstwhile Assam Oil Company the asset of the Company were vested with IOCL and earlier Company was retained as separate Division of IOCL (AOD). He further stated that initially Assam Oil Division was maintained as a separate division, but vide memorandum of settlement dated 16.02.1985 it was agreed that the pay scale, job classification as well as incidental to employment of the earlier Assam Oil Company Ltd shall be substituted in entirety by that of the IOCL as applicable in R & P Division. He further stated that later on due to bifurcation of the R & P Division into separate Refineries and Pipeline Divisions, all employees of Assam Oil Division fall within the refinery division and are following the same pay scales, benefits, other terms and conditions of the Refineries Division. He exhibited the memorandum of settlement dated 16.03.1985 as Exhibit-D. He further stated that in Clause 2.17 of the MOS dated 16.02.1985 there is mention of work hour as under:-

“2.17.1 Working Hours.

Working hours for all categories of workman shall be rationalized keeping in view the working hours operating in R & P Division. Management and Union shall jointly endeavour to implement the change of working hours within three months from the date of this settlement”.

He further stated that as per Section 9A of the I. D. Act, 1947 a notice was issued on 06.12.2010 proposing the change of working hours by giving more than 21 days prior notice. He further stated that majority of shift workers in IOCL (AOD) are following 48 hours per week (6 days work with 1 day off). But some of the shift workers primarily working in Production Department, P & U Department of Digboi Refinery were working under different hours of work schedule having 42 hours per week (6 days work with 2 days off). He further stated that in Assam Oil Division of IOCL 3 different sets of timings are being followed in a few departments as stated under:

- (i) 36.25 hours per week for Ministerial Staff,
- (ii) 42 hours per week for about 60 numbers of shift employees, and
- (iii) 48 hours per week for about 628 non Ministerial Staff.

He further stated that because of that disparity in the working hours there was resentment among large number of workmen working in the Refinery and ultimately a settlement was arrived at on 16.2.1985 which was exhibited as Exhibit-D. He also stated that thereafter by Bipartite settlement between the recognized Union and the management dated 09.01.2007 the Union agreed to adopt per week work schedule followed in other units of IOCL i.e. 48 hours of work per week. He exhibited the aforesaid Bipartite Settlement as Exhibit-F. During cross-examination he admitted that The Refinery Division and Assam Oil Division are 2 different Divisions of IOCL. He also admitted that he did not submit any document to show resentment among workmen in respect of different work hours. The witness however clarified that Exhibit-F submitted by him speaks of dissatisfaction among the workmen. He also admitted that Exhibit-7 was a photo copy of original Standing Order of IOCL issued in the year 1967 and to his knowledge there has not been any amendment to that Standing Order. The witness denied the suggestion that the management is trying to deprive the concerned workmen involved in this reference. He also denied the suggestion that the notice issued u/s 9A of the I.D. Act was illegal. Management witness No.2 also stated more or less the similar things like that of MW.1 in his examination-in-chief.

During cross-examination he stated that every Division of IOCL has its own respective Administration and different categories of workmen having 48 working hours per week are accommodated in one unit. He also admitted that the concerned workmen having 42 working hours are now posted in different Units.

8. During argument learned lawyer appearing for the petitioner Union submitted that the concerned workmen have been all along working for 42 hours per week followed by 2 days off by sacrificing the special allowance amounting to 10% of their respective basic pay. He further stated that IOCL (AOD) has a distinct identity in the larger family of IOCL and the action of the management in seeking to bring change in the work hours of the concerned workmen to their detriment is illegal and arbitrary. Learned Senior Counsel appearing for the management, on the other hand, submitted that the management was simply trying to rationalize the work hours of the workmen to bring parity among the non ministerial staffs in respect of work hours. He further submitted that the Union had also agreed to it and that apart, the proposed change in work hour is very much within the limit provided in the Factories Act.

9. On consideration of the materials on record as well as the submissions of the parties it appeared to me that the plea of the workmen was that their work hours per week is to be as per the erstwhile Assam Oil Company since the company has been retained as a separate division even after being vested on the IOCL. This ground does not appear to be convincing for the simple reason that as per the provision of Section 11 of the Act, 1981 the service condition of the employees who were in service on the relevant date, that is 14.10.1981, could be altered by the Central Government or the successor Government Company. The successor Government Company here, is IOCL. Hence IOCL has the right to bring in change in service conditions within the prescribed provisions of the law of the land. Moreover, none of the concerned workman was in service when the Act, 1981 was brought into force. From the evidence adduced by the management side it also appeared that the main intention of the management behind issuance of the notice u/s 9-A of the I. D. Act, 1947, was to rationalize work hours of the workmen. The management also proved a memorandum of settlement dated 9.1.2007 between the management and the AOC Labour Union as Ext-F (proved in original) wherein the subject matter was rationalization of working hours. One of the agreements was as follows:- “48 hours work schedule shall be adopted for all the FBA workmen as mentioned in the annexure-I”. The materials on record clearly revealed that the management issued the notice u/s 9-A of the I. D. Act, 1947 after arriving at an agreement with the majority Union. Even without that agreement the management was empowered to change working hours after issuing a notice as mentioned above subject to upper limit of weekly working hours prescribed by the law of the land. The management proposed to make 48 hours working hours per week for all the non ministerial staffs which is not in violation of the law of the land. All such workmen who will be made to work 48 hours per week with one day off per week will also be entitled to a special allowance @ 10% of their respective basic pay. Though IOCL (AOD) is a separate division, it is under IOCL and pay scale, service conditions of all the employees are determined by the IOCL. The original company, Assam Oil Company was vested upon the successor Government which is IOCL after coming into force of the Act, 1981. The proposed rationalization of work hours of the non ministerial staffs of the Company, therefore, did not appear to be

in violation of the prescribed maximum weekly working hours. The Company will also pay special allowances @ 10% of the basic pay to all those employees whose work hours have been sought to be changed from 42 hours per week with 2 days off to 48 hours per week with one day off. There did not appear to be any illegality in the action of the management in issuing the notice u/s 9-A of the I. D. Act, 1947.

10. In view of the above, it appears to me that the action of the management of IOC(AOD), Digboi in proposing change of working hours and weekly off vide notice dated 6.12.2010 was not illegal and unjustified. The reference is therefore, disposed of with a no relief Award.

Given under the hand and seal of this Tribunal on this 6th day of September, 2018.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1555.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स बजाज अलायज लाइफ इंश्योरेंस कं. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 13/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-17012/6/2010-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the Manager, M/s. Bajaj Allianz Life Insurance Co. Ltd. and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-17012/6/2010- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :RAKESH KUMAR, Presiding Officer

I.D. No. 13/2010

Ref.No. L-17012/6/2010-IR(M) dated 06.07.2010

BETWEEN

Sri Rajesh Ranjan, S/o Sri Ravi Shankar Pathak

Village Bhusula, Post Lalganj, Distt. Ballia (U.P.)

AND

1. The Sr. DM,
Bajaj Allianz Life Insurance Co. Ltd.
Sarju Vilas Complex, Ockdenganj Choraha, Ballia-277001
2. The Regional Manager,
Bajaj Allianz Life Insurance Co.Ltd.
Afihant Complex, 4th Floor
Sagra Varanasi-221002

AWARD

1 By order No. L-17012/6/2010-IR(M) dated 06.07.2010 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial

Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Rajesh Ranjan S/o Sri Ravi Shankar Pathak, Ballia and the Sr.DM/RM, Bajaj Allianz Life Insurance Co. Ltd. of Ballia/Varanasi for adjudication.

2. The reference under adjudication is:

“WHETHER SRI RAJESH RANJAN, JUNIOR SALES MANAGER IN BAJAJ ALLIANZ LIFE INSURANCE COMPANY LTD. IS A WORKMAN AS DEFINED UNDER I.D. Act, 1947?

IF SO, WHETHER THE ACTION OF MANAGEMENT OF M/S BAJAJ ALLIANZ LIFE INSURANCE COMPANY LTD., IN TERMINATING THE SERVICES OF SRI RAJESH RANJAN W.E.F. 28/07/2009 IS JUSTIFIED? WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED TO AND FROM WHICH DATE?”

3. As per claim statement W-4 dated 27.08.2010, the petitioner workman has stated in brief that on 12.06.2006, he was appointed on the post of Jr. Sales Manager, at Ballia and due to his work conduct and performance he was gradually promoted to the post of Asstt. Sales, Manager thereafter Sales Manager, his superior authorities were fully satisfy with his work and thereafter neither any complaint or charge against him but without any prior notice and legal formalities his services wre illegally terminated on 28.07.2009, which is against the principle of natural justice as well. Before ALC (C) Allahabad efforts were made for reconciliation but it did not succeed. The workman has alleged that new persons were appointed and junior were given preference, after his illegal termination owing to prejudice and malafidy of the management.

4. The petitioner has submitted that he is covered under the definition of workman as provided in Section 2(S) of the I.D. Act. 1947, since no administrative and financial and supervisory work was assigned to him he was not authorized to appoint any person, rather his main work was to get trainded other persons so as to enable them function of Agent his nature of work was like that of Dev. Office, LIC. He has further asserted that Hon'ble Supreme Court and Hon'ble High Court in several judgments have elaborated the definition of the workman. Moreover, the nature of work assigned to the petitioner is quite evident from the language of the appointment letter. Violation of several provisions of the I.D. Act and Constitution of India has been alleged in the claim statement. Neither any prior notice was issued nor any opportunity of defend himself was provided on the imaginary fictious allegations petitioner services were terminated abruptly on 28.07.2009. With the aforesaid averments, request has been made to declare the service termination order dated 28.07.2009 is illegal and get the petitioner reinstated with salary and consequential benefits etc.

5. Certain documents has been filed by the petitioner as per list W-10, alongwith an affidavit dt. 4.06.2011 and photo copies of rulings of Hon'ble Supreme Court and Hon'ble High Courts.

6. With denial of the allegations leveled in the claim statement, the management has fioed written statement M-16 by submitting therein that the opposite party company terminated the services of the petitioner he was working as Sr. Sales Manager, 28.07.2009, by paying him one month notice pay, in view of the notice. Opposite party has submitted that the petitioner is not covered under the definition of the workman, his petition is not maintainable in law neither on merit nor nor or law. Full and final settlements of the formalities have been completed by the company vide its letter dt. 01.10.2009, while forwarding a cheque dt. 29.09.2009 for Rs.24997/- it was clearly mentioned in the appointment letter in case of any dispute the courts in Pune have the jurisdiction to decide the issue.

7. It is further asserted that the appointment letter issued by the company and accepted by the petitioner is like a civil contract between the parties, there fore the so called dispute is not maintainable before this Hon'ble Court. The opposite party has further stated that the company is registered in the Indian Companies Act. and before the IRDA as well, it under takes the business of Life Insurance under the licence issued by the authorities. Upon certain terms and conditions the petitioner was appointed as Jr. Sales Manager on 24.06.2006, on the terms and conditions mentioned in the appointment letter without any dures or force. The petitioner's main nature of duties was to recruit Insurance Consultants on behalf of the company, he was empowered to independently recruit the eligible Insurance Consultants and the persons so recruited used to report to him for their day to day business. It has also been admitted that the workman was subsequently promoted to the post of Sr. Sales Manager before his termination 28.07.2009, during his service he did not make any complaint before the authorities and therefore all the allegations of unfair practice etc. are totally false and baseless.

8. The opposite party has alleged that on several occasions, complaint against the workman were made by his subordinates and the Insurance Consultants regarding arrogant beehaviour for which he advised by his superiors and warning was also issued to improve himself but he did not adhre to the advise given by the superior authorities. Under these circumstances company was compelled to terminate his services since the working atmosphere was adversely affected by his behaviour. As mentioned above one month's pay in lieu of notice was paid to the petitioner which was accepted by him, and he has concealed the material fact before this Court. After his termination he never approach the company rather he had accepted the whole sum paid by the company without any whisper of complaint. Proceeding before ALC (C) Allahabad have been accepted in written statement. The opposite party has further submitted no provisions of the I.D. Act has ever been violated or contraverted. The opposite party has requested to dismiss the claim statement.

9. During the proceeding before the then hon'ble Judge my learned predecessor, the case proceed ex-parte against the management and a Award was delivered accordingly, which was notified vide letter dated 23.07.2012 issued by the Govt. of India. However, Hon'ble Allahabad High Court vide its order dated 3.04.2014 passed in Writ –C No. 62785/12, set aside the award dated 18.05.2012 with the directions to petitioners (management) to produce a bank draft of Rs.20000/- toward payment of cost. Thereafter proceedings resumed in compliance of the directions given by the Hon'ble Court. A application W-17 was moved by the petitioner for settlement of the case through Lok Adalat. But issue could not materialize and it was informed to the Court that there is no possibility of amicably settlement. The workman requested to file rejoinder but he failed to file any rejoinder, although several opportunities was provided.

10. Mentioning certain typing error in claim statement an amendment application dt. 17.12.2014 was moved by the workman. Objection M-23 was filed by the management. Again several dates were fixed, opportunity was provided, notice through registered post was given to the workman. Neither the workman nor his any authorized representative appeared in the Court, thereafter for the reasons best known to the workman, he refrained himself from appearing in the Court.

11. The amendment application filed by the workman was disposed vide order dated 2.08.2017 passed by this tribunal referring therein pronouncement of Hon'ble Supreme Court, (2006)6,SCC, Baldev Singh page 498.

12. The workman did not file any evidence in support of the petition/claim statement, therefore the opposite party also preferred not to file any oral evidence in support of the written statement.

13. Despite being given sufficient opportunity to the workman, he neither filed any corroborative evidence nor submitted his argument before this Tribunal. Therefore the arguments advanced by the Learned AR for the opposite party were heard at length. Record was scanned thoroughly

14. During the proceeding before this Court following rulings have been referred on behalf of the workman;

1. 1983 (47) FLR, S.K.Verma vs Mahesh Chandra and another page 313.
2. 2011(128) FLR 819 Pam Network Ltd. and B.Balakrishna page 819
3. 2007 (111) FLR 530 R.Bala Krishnan and Managing Director, Tasmag Ltd. and other page 530.
4. 2007 (114) FLR 531 Shanmuga Metals and Regional Director, Employees State Insurance Corpn. page 531.
5. 2007 (114) FLR 21 M/s. Shree Baidyanath Ayurved Bhawan Ltd., Allahabad and Presiding Office, Industrial Tribunal (I) Allahabad. 2007 (114) FLR 27 M/s AAJ Prakashan Ltd. and PO, Industrial Tribunal III, Kanpur.

15. Learned AR for the opposite party submitted that the aforesaid rulings do not support the grounds taken by the petitioner.

16. Learned AR for the management relied upon the following citations;

1. 2008 (188) FLR, M/s. Uptron Power Tronic Employees Union vs PO, Labour Court, Ghaziabad page 1164
2. 1981 (43) FLR, VK Raj industries vs Labour and other page 194.

17. In M/s. Uptron Powertronics Employees Union, Ghaziabad through its Secretary vs Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in Sanker Chakravarti vs Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC) VK Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airech Private Ltd. v State of U.P. and others 1984 (49) FLR 38 and (Alld) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004, wherein it was observed by the Apex Court.

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

18. After having heard the intellect comprehensive arguments of both the parties at length, perusal of the record in the light of pronouncement of the Hon'ble Supreme Court and Hon'ble High Court, it is inferred that the service termination order dt. 28.07.2009, can not be treated as illegal or unjustified. . The petitioner workman is not entitled to any relief.

19. Award as above

RAKESH KUMAR, Presiding Officer

LUCKNOW

14.09.2018

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1556.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स इण्डियन रेअर अर्थ लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 311/2001, 312/2001, 313/2001, 314/2001, 315/2001, 316/2001, 317/2001 एवं 351/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-29012/78/1999-आईआर (एम),
सं. एल-29012/75/1999-आईआर (एम),
सं. एल-29012/77/1999-आईआर (एम),
सं. एल-29012/73/1999-आईआर (एम),
सं. एल-29012/79/1999-आईआर (एम),
सं. एल-29012/72/1999-आईआर (एम),
सं. एल-29012/74/1999-आईआर (एम),
सं. एल-29012/76/1999-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 311/2001, 312/2001, 313/2001, 314/2001, 315/2001, 316/2001, 317/2001 and 351/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of M/s. Indian Rare Earths Limited and their workman, which was received by the Central Government on 5.10.2018.

[No. L-29012/78/1999-IR(M),
No. L-29012/75/1999-IR(M),
No. L-29012/77/1999-IR(M),
No. L-29012/73/1999-IR(M),
No. L-29012/79/1999-IR(M),
No. L-29012/72/1999-IR(M),
No. L-29012/74/1999-IR(M),
No. L-29012/76/1999-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer, C.G.I.T.-cum-Labour

Court, Bhubaneswar.

Date of Passing Award – 24th August, 2018

Tr. INDUSTRIAL DISPUTE CASE NO. 311/2001, Tr. I.D. Case No. 312/2001, Tr. I.D. Case No. 313/2001, Tr. I.D. Case No. 314/2001, Tr. I.D. Case No. 315/2001, Tr. I.D. Case No. 316/2001, Tr. I.D. Case No. 317/2001 & Tr. I.D. Case No. 351/2001.

Between:

Sr. General Manager,
Indian Rare Earths Limited,
At./Po. Matikhalo, Via. Chhatrapur,
Dist. Ganjam.

...1st Party-Management

(And)

1. S/Shri Utpal Acharya (Tr. I.D. Case No. 311/2001)
2. Manoj Kumar Pradhan (Tr. I.D. Case No. 312/2001)
3. P.D. Patra (Tr. I.D. Case No. 313/2001)
4. Prakash Ch. Nayak (Tr. I.D. Case No. 314/2001)
5. T.S. Reddy (Tr. I.D. Case No. 315/2001)
6. Dillip Kr. Panigrahi (Tr. I.D. Case No. 316/2001)

7. S.C. Bhatt (Tr. I.D. Case No. 317/2001)

8. Lingaraj Sahoo (Tr. I.D. Case No. 351/2001)

...2nd Party-Workmen.

Appearances:

M/s. Aditya Mishra, Advocate

...For the 1st Party-Management

M/s. Subrat Mishra, Advocate

...For the 2nd Party-Workmen

AWARD

This common award is passed in the cases bearing Tr. I.D. Case No. 311/2001, Tr. I.D. 312/2001, Tr. I.D. 313/2001, Tr. I.D. 314/2001, Tr. I.D. 315/2001, Tr. I.D. 316/2001, Tr. I.D. 317/2001 and Tr. I.D. Case No. 351/2001 registered out of separate references made by the Central Government in the Ministry of Labour in exercising its authority conferred by clause (d) of sub section (1) and sub section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") vide their letters number L-29012/78/99/IR(M), dated 24.01.2000, L-29012/75/99/IR(M), dated 25.01.2000, L-29012/77/99/IR(M), dated 25.01.2000, L-29012/73/99/IR(M), dated 25.01.2000, L-29012/79/99/IR(M), dated 25.01.2000, L-29012/72/99/IR(M), dated 25.01.2000, L-29012/74/99/IR(M), dated 25.01.2000 & L-29012/76/99/IR(M), dated 25/01/2000, respectively since the disputes raised in the above references are related to reinstatement of the disputants and facts and circumstances giving rise to the disputes as well as pleadings and evidence advanced by the parties are almost identical in nature. The terms of reference involved in the cases except the name of the disputants is as follow.

"Whether the disputant S/Shri Utpal Acharya, Manoj Kumar Pradhan, P.D. Patra, Prakash Ch. Nayak, T.S. Reddy, Dillip Kumar Panigrahi, S.C. Bhatt & Lingaraj Sahoo was a workman under the management of Indian Rare Earths Ltd., Chatrapur? If yes, whether the action of the management in not reinstating the services of the disputant is justified? If not, to what relief the disputant is entitled?"

2. In their respective statement of claim the disputants namely S/Shri Utpal Acharya, Manoj Kumar Pradhan, P.D. Patra, Prakash Ch. Nayak, T.S. Reddy, Dillip Kumar Panigrahi, S.C. Bhatt & Lingaraj Sahoo have claimed that they were working as Helpers/Cooks on a consolidated wages of Rs. 600/- per month on being appointed by the 1st Party-Management with effect from 04.07.87/05.07.87, 05.04.87/06.04.87, 31.05.86/01.06.86, 09.11.87/10.11.87, 15.09.85/16.09.85, 02.09.87/03.09.87, 04.03.86/05.03.86 and 07.04.87/08.04.87 respectively. It is their case that the canteen is the part of the establishment of the 1st Party-Management and it was established in the year 1984 as per statutory requirement to provide healthy foods in subsidized rate to the employees of the industry. Utensils, furnitures, cookeries and other materials required for running the canteen are being supplied by the 1st Party-Management. Financial aid is also given to the canteen from time to time for providing foods to the workmen of the 1st Party-Management in subsidized rate. Such canteen is the integral part of the Management-industry to promote healthy and better industrial relationship between the employer and employees. Initially the canteen was run under the direct supervision and control of the Management through a registered co-operative society formed by the employees of the Management. The 1st Party-Management constituted committees on different occasions to look after the management of the canteen. The business of the canteen is also audited by the officer of the 1st Party-Management. Being appointed as Helpers/Cooks they worked continuously for more than 240 days in a twelve months each calendar year till they were orally informed by the Canteen Supervisor that their services were no more required by the 1st Party-Management and accordingly they were disengaged on different dates as mentioned in their respective claim statements. It is their claim that they were working directly under supervision and control of the 1st Party-Management and their wages were paid by the said Management. They were not offered any notice pay or retrenchment compensation when they were refused employment. Some workmen, who joined in the canteen subsequent to their appointment, were allowed to work in the canteen. The 1st Party-Management entered into a settlement with Rare Earths Employee Union as a result of which services of 44 canteen workers were regularized under the Management in the year 1994. It is the claim of the disputant workmen that after refusal of employment they put-forth their grievances before the officer of the 1st Party-Management. But, the Management did not pay any heed to their grievances and representations for their reinstatement. They were running from pillar to post and approached the various authorities of the 1st Party-Management for their illegal removal and ultimately they were forced to raise disputes before the Labour machinery when the Management failed to take any action on their approach and representations. The conciliation proceeding before the labour machinery having been failed culminated in the references as mentioned above.

3. The claims of the 2nd party-workmen are refuted by the Management in the written statements filed in the reference cases. It has been pleaded that in no point of time the disputants were ever appointed or engaged by the Management as Helpers/Cooks in the canteen. The canteen was run independently by a registered co-operative society of the employees till a settlement was arrived in the year 1994 between the employees Union and the Management to regularize the services of 44 canteen workmen in the event of the canteen being accepted by the Management as a part of its establishment. There was no master and servant relationship between the Management and the disputant workmen when they were initially engaged in the canteen or when they were allegedly refused employment. It has been further pleaded by the Management that on 10.3.1989 the Rare Earth Employees Union raised an industrial dispute before the A.L.C. (C) on 8 points charter of demand for 66 numbers of workmen including a demand for regularizing the services of workmen engaged in the canteen. Pursuant to such a dispute raised before the Assistant Labour Commissioner a

settlement was signed on 5.12.1989 between M/s. IRE Employees Co-operative Stores Ltd., and the Rare Earths Employees Union resolving certain disputes including regularization of 44 persons in the services of the IRE Employees Co-operative Stores Ltd. The name of the disputants workmen were not figured in regularization of such 44 persons. Had they been employees of the canteen their names would have been found in the list of the canteen workmen for regularization of their services. The disputants having been allegedly disengaged in between 1990 to 1991 could have raised their disputes arising out of alleged illegal termination before the appropriate authority soon after their terminations had they been employee of the said canteen. The present disputes were raised ten years after the alleged terminations with an ulterior motive when the services of existing staff of the canteen were regularized in the establishment of the Management in 1994 due to a settlement between the Employees Union and the Management. Since the disputants were not in the jobs and they are stated to have been disengaged much prior to the dispute raised by the R.E.E. Union for regularization of services of working canteen boys, the Management cannot be liable to reinstate them and regularize their services. They had no cause of action also to raise the disputes under the I.D. Act as they were not workmen of the 1st Party-Management in any stretch of imagination and therefore the references are not maintainable in the eye of law. Thus, the Management has prayed for dismissal of the claim statements.

4. On the aforesaid pleadings of the parties similar nature of issues as described below have been settled in all cases for just and effective adjudication of the disputes.

ISSUES

1. Whether the disputant is serving as a workman under the Management of Indian Rare Earth Limited, Matikhalo?
2. Whether the action of the Management in non-reinstating the disputants is justified?
3. Whether the reference is maintainable?
4. To what relief the workman is entitled to?

The disputant workmen have examined themselves in their respective cases and filed same and identical documents, which are marked from Ext.-1 to Ext.-25 in each case, to substantiate their claims. On the other hand the Management has examined the same witness with identical version in all cases and exhibited the same and identical documents marked as Ext.-A to Ext.-X in each case to refute the claims.

FINDINGS

6. Since issues no. 1 to 3 are inter-related to each other and vital for the just adjudication of the dispute, they are taken into consideration simultaneously for the sake of convenience.

It is seen from the pleadings and evidence advanced by the parties before this Tribunal that the canteen was established from the very inception of the 1st Party-Management and a registered cooperative society of the employees was running the canteen till services of 44 canteen workers were regularized in 1994 pursuant to a settlement between the R.E.E. Union and the management of the 1st Party. The settlement was arrived in a conciliation effort before the Assistant Labour Commissioner (Central) as a constant demand was raised by the R.E.E. Union for regularization of service of canteen workers on a contention that the canteen was part of the establishment of the Management. It is also emerging as well as in the pleadings of the Management that before regularization of service of the canteen boys, the co-operative society of the employees was in charge of the management of the canteen and the said society took charge of the canteen in the year 1984. This fact is found support from the document marked as Ext.-1 filed by the disputants. It is the stand of the disputants that they were appointed by the 1st Party-Management to work as Helpers for smooth running of the canteen since the canteen is the part of establishment of the management and there was a statutory obligation for the 1st Party-Management to provide healthy foods to its employees in subsidized rate to promote better industrial relationship between the Management and its workmen. The registered co-operative society was only entrusted to look after the canteen on behalf of the Management and the said society had nothing to do with the service of canteen boys except as an intermediary of the 1st Party-Management. It has been pleaded and stated in evidence of the disputants that they were working in the canteen in between the year 1987 to 1991 continuously on being appointed by the 1st Party-Management itself for a monthly wages of Rs. 600/-. Admittedly, not a single scrap of paper relating to their appointment and payment of wages to them by the 1st Party-Management is filed to substantiate their pleading and oral evidence. Being appointed to work as Helper for a meagre remuneration of Rs. 600/- per month it is not expected that they might have been issued with any appointment letter. But, law is well settled that when the existence of employer and employee relationship is denied by the employer, a duty is cast upon the employee to discharge the burden of proof in regard to the relationship of employer and employee and such relationship is required to be established by not only self oral assertion of the disputant employees but also by the evidence having credibility in the eye of law. Further, the proof of working for 240 days in a twelve months calendar year as defined under section 25-B is also required to be proved by the employee when he claims that his retrenchment/termination/removal was illegal and unjustified on account of infraction of the provisions of Section 25-F of the Act in view of the principle set out by the Hon'ble Apex Court in the case between Range Forest Officer –versus- S.T. Hadimani (2002) 1 LLJ 1053 SC. As the 1st Party-Management has denied the engagement of the disputants in the canteen more particularly by the management itself, it is to be determined first whether the disputants were ever engaged or employed in the canteen and they were denied employment or they were retrenched. It is to be seen if the disputants have discharged their onus of proof in this regard.

7. Coming to the evidence of the parties available on the records it is seen that there is no specific denial by the Management that the services of the disputants were never utilized in the canteen or they were not engaged by any contractor or registered cooperative society for any period. On the other hand it is emerging from the sworn affidavit of the management witness K. Vijay Rao filed towards his examination-in-chief that the disputants were working in the canteen previously when it was run by the Cooperative Society. In his cross examination he has admitted that prior to his joining along with 43 other canteen workers in the 1st Party-Management, he was deployed in the canteen and the store run by the co-operative society. Therefore, he appears to be competent to say if the disputants were ever engaged in the canteen as Helpers. If the self assertions of the disputant are taken into consideration along with the oral testimony of M.W.-1 it can be safely said that the disputants were also in the employment of the canteen. That apart, Ext.-25, which is a Xerox copy of the order of provident fund authority passed in a proceeding under section 7-A of the E.P.F. & M.P. Act and admitted in evidence without objection, reveals that the 1st Party-Management being shown and treated as an employer of the disputants on account of their engagement as canteen boys in the canteen was directed to make deposit an amount of Rs. 58,200/- towards P.F. contribution of the disputants. The above contribution was assessed for the period in which each disputant had worked. The period of employment of each disputant is found to have been mentioned in the said order (Ext.-25). The 1st Party-Management has not adduced any oral evidence as well as documentary evidence to establish or to claim that the said order under section 7-A of the E.P.F. Act asking deposit of provident fund contribution for the disputants was ever challenged in any higher forum or the same was set aside by any higher authority. It is also emerging from the oral testimony of M.W.-1 and the documents relied upon by the 1st Party-Management that initially a dispute was raised by the R.E.E. Union for regularization of services of 66 workmen who were alleged of working in the registered cooperative society. The list of the 66 workmen furnished by the Union includes the names of the disputants. Having regard to the above facts and circumstances as emerging from the evidence of the parties it can be safely held that the disputants were employed as Helpers in the canteen. Further, the pleading and evidence of each disputant read with Ext.-25 clearly establishes that Shri Lingaraj Sahoo worked in the canteen for the period from 8.4.1987 to 31.5.1990. Similarly, disputants P.S. Reddy, S. Chandra Bhatt, Dilip Panigrahi, P. Janaradhan Patra, Manoj Pradhan, Utpal Acharya and Prakash Naik are found to have worked in the canteen for the period from 16.09.1985 to 30.06.1990, 05.08.1986 to 31.01.1991, 08.04.1987 to 05.06.1990, 01.06.1986 to 31.05.1990, 06.04.1987 to 31.05.1990, 05.07.1987 to 16.02.1990 and 10.11.1987 to 31.8.1990 respectively. There is also no pleading on the part of the 1st party-Management that the disputants had not worked for more than 240 days continuously in a calendar year. It is not pleaded also that the disputants had voluntarily left or abandoned their services and no evidence is also advanced by the Management in this aspect. In that view of the matters the claim of the disputants that they were refused employment is to be accepted. Such refusal of employment shall be treated a retrenchment/termination/removal as defined under section 2(oo) of the I.D. Act. It is not in dispute that none of them was given notice pay and retrenchment compensation as required under section 25-F of the Act when they are stated to have been refused further employment in the canteen. Be that as it may, the alleged retrenchment of the disputants was undoubtedly illegal and unjustified in view of contravention of the provisions of Section 25-F of the Act.

8. Taking into consideration the term of reference made to the Tribunal and the pleadings advanced by the parties now it is to be seen whether the disputants were the employees of the 1st Party-Management or the employees of the registered co-operative society. It may be stated here that the main plank of the averments advanced by the 1st Party-Management is that no employer and employee relationship was existing between the disputants and the 1st Party-Management during the period when the disputants are stated to have worked in the canteen. Though no specific pleading and evidence has been advanced by the disputants to claim that the 1st Party-Management is covered by the Factories Act or Mining Act on account of it being a production unit or extraction of mineral unit and it has a statutory obligation under those Acts to provide a canteen to its employees, it cannot be over-sighted that the 1st Party-Management has been established to extract certain rare elements from sand deposits and thereby it is to be guided by the Mining Act. The provisions of the Mining Act require to provide a canteen to its employees for supply of healthy food in reasonable prices to promote healthy and better industrial relationship between the employer and employee and thereby the canteen is said to be a part of its establishment. Further, the canteen is found to be established inside the premises of the 1st Party-Management and the employees/workmen of the 1st Party are the only customers of the said canteen. There is no pleading or evidence on the part of the Management to suggest that any canteen other than the present one was available inside the premises of the 1st Party-Management or established by the Management as a part of its establishment as required under the statute. On the other hand, it is emerging from the documents filed by the disputants that the accommodation of the canteen is provided by the 1st Party-Management so also its utensils, furnitures, fitting and fixtures. The documents filed by both the parties lead to inferences that the 1st Party-Management constituted committee or directed its officer for smooth functioning of the canteen. Financial grants had been given to the canteen on certain occasions though it is emerging from the oral and documentary evidence of the parties that the co-operative society was looking after the day to day affairs of the canteen during the relevant period in which the disputants are found to have been working in the said canteen. As per the settled principles of the Hon'ble Apex Court more particularly principles set out by the Hon'ble Apex Court in the case of M.M.R. Khan and others –versus- Union of India, 1990 Suppl. SCC 191 a canteen can be termed as part of the establishment of the Management and termed as statutory canteen when it is established pursuant to a statutory obligation for the use of its employees since provision of canteen is a part of service condition of the employees. Therefore, the workers employed in such canteen are the employees of the Management irrespective of the fact that the canteen being run through the contractor or a registered co-operative society.

9. Keeping in view the oral evidence made by the M.W.-1 and the documents relied upon by the Management more particularly the documents relating to the settlement between the R.E.E. Union and the Management under Ext.-E/1 and Ext.-L and the papers relating to resignations of the 44 canteen workers under Ext.-T series and their joining reports to the Management under Ext.-X argument has been advanced on behalf of the Management that in any stretch of imagination the workers employed in the canteen cannot be treated as employees of the Management till regularization of their services and they are to be treated as the employees of the contractor or the co-operative society through whom the canteen was managed. The principles set out by the Hon'ble Apex Court in the case cited above or the cases relied upon by the 2nd party-workman are not applicable to decide the claim of the disputants since the dispute involved in those cases are related to regularization of their services as dispute was raised for regularization of services of the working canteen boys. Taking through the principles set out by the Hon'ble Apex Court in the case between Haldia Refinery Canteen Employees Union and Ors. –versus- Indian Oil Corporation Ltd., and Ors. Reported in 2005 (5) ALLMR SC 922, in the case of Ram Singh and Ors., -versus - Union Territory, Chandigarh and Ors. Reported in 2004 (5) ALLMR (SC) 164, in the case of Mukand Ltd. –versus- Mukand Staff and Officers Association reported in 2004 (5) ALLMR (SC) 839 the learned counsel for the Management has strenuously contended that there being no employer and employee relationship between the Management and the disputants and the disputants having specifically failed to prove their terminations being effected by the Management and the trade Union having raised a dispute relating to the alleged illegal termination in an earlier occasion and the Government having refused to refer the said dispute for its adjudication, there is no scope for the disputants to claim their reinstatement by the present Management by showing them as workmen of the Management. It has been further argued that that alleged termination of the disputants not being the subject matter of the reference, the Tribunal, being creature by virtue of the terms of reference, cannot decide whether there was any contravention of the provisions of the Act while services of the disputants were terminated by the co-operative society and thereby the present Management is not required to comply the direction of the Tribunal for such infraction of the provisions of the Act.

10. On a mere reading of the schedule of the reference it is clear that the schedule of the reference has two facets, one is related to whether the disputants were workmen of the 1st Party-Management and the other one is whether the action of the Management in not reinstating the services of the disputants are legal and justified. The term of reference regarding to reinstatement implicitly refers to the disputes one relating to validity of termination/retrenchment and the other one pertains to regularization. Unless the validity of termination/retrenchment is decided by the Tribunal there is no scope for the Tribunal to examine whether claim of reinstatement by the disputants was legal and justified. Hence, the argument advanced by the Management that the Tribunal has no scope to examine the validity of the termination/retrenchment has no leg to stand. Rather, it would not be just and appropriate on the part of the Tribunal to jump over the issue of validity or illegality on the part of the then management of the canteen in terminating or disengaging the disputants and to decide the issue whether the action of the Management in not reinstating the services of the disputants is legal and justified.

11. Coming to the issue whether the disputants were the employees of the co-operative society or the Management of I.R.E. it is the argument of the learned counsel for the Management that the evidence of the record is totally insufficient to establish that the disputants were ever employed by the Management directly or indirectly in any point of time or it was having control or supervision on their activities in the canteen. There is also no evidence to show that their wages was paid by the Management. But, it is emerging from the cross examination of M.W.-1 that the provisions of the Mines Act is applicable to I.R.E. and the Management of I.R.E. is a production unit/manufacturing unit. It is the only canteen established in the premises of the Management catering the need of its employees. Further, it is emerging from the evidence adduced by the disputants that Personnel Officer of I.R.E. passed an order dissolving the Management Committee of the canteen and handed-over the management of the canteen to the co-operative society vide Ext.-2. The accounts of the canteen were audited by the internal auditor of the management of IRE. An interim committee was also constituted in the year by the General Manager, IRE to look after day to day functioning of the canteen and supply of distribution of lunch, dinner and snacks etc. It is apparent from the evidence of the parties that electricity and coal for the coke-oven of the canteen were supplied by the Management. Some financial assistance in shape of subsidies and raw materials were provided by the Management to the canteen. Documents were also available to show that the Management of IRE had provided assistance for supply of shoes, dresses, liveries etc. to the canteen employees and also Bonus to them. It cannot be over-sighted that there was a statutory obligation on the part of the IRE Management to provide canteen facilities to its employees in the premises of the mines as per the provisions of the Mining Act. In that view of the matter it can be safely concluded that the canteen being a statutory one is the part of the establishment of IRE Management. Further, it can be safely inferred from the action of the Management in regularizing services of 44 canteen boys in the year 1994 that the canteen was a part of the establishment of the management for which the Management agreed and took steps in regularizing the services of the canteen boys in the year 1994. That being the position the disputants having been found to have worked in the canteen are to be treated workmen of the 1st Party-Management irrespective of the fact that the management of the canteen was under co-operative society during the period of their employment. Keeping in view the principles set out by the Hon'ble Apex Court in various cases including in its decision in the case of Indian Overseas Bank Staff –versus- Indian Overseas Bank And Anr.

Reported in (1999) III LJ 621 Mad and other cases it can be safely said that the disputants were workmen of the IRE Management even though they were required to work under supervision and control of the co-operative society, who was entrusted to run the canteen on behalf of the IRE Management. This fact finds support from the order passed by E.P.F.

Authority under section 7-A of the E.P.F. Act (Ext.-25). There is nothing in Ext.-25 to suggest that the IRE Management was directed to make deposit of E.P.F. contribution being the principal employer so far the management of the canteen is concerned. Be that as it may, the IRE Management can be held liable or responsible for any retrenchment or termination of services of the disputants in violation of Section 25-F. The principles set out in the decisions referred above by the learned counsel for the Management do not seem to be applicable in the facts and circumstances of the present case as the observations and principles are set out in different context.

12. Coming to the argument advanced by the Management that the dispute was raised more than ten years after the alleged retrenchment or termination and the refusal of appropriate authority to refer the dispute in earlier occasion it is seen that before regularization of 44 canteen workmen in the year 1994, the R.E.E. Union was raising dispute of regularization of services of 66 workmen working under the supervision of the co-operative society and the disputants were covered by those 66 workmen. There is nothing in the evidence of the Management to show that the disputants were ever aware of the fact that their dispute espoused through the Union was ever refused by the appropriate authority for a reference under the provisions of the I.D. Act. Further-more, there is nothing in evidence to show that their dispute regarding illegal retrenchment/disengagement was ever espoused through the Union except the claim of their regularization of their service in the IRE Management. Undoubtedly there is a delay of more than nine years in raising the disputes. When there is no limitation for the purpose of raising an industrial dispute under the I.D. Act the reference cannot be questioned on the ground of delay alone. As a settled principle in a case where delay is shown to be existing, the Tribunal can appropriately mould the relief to be granted to the workman. It is well settled that industrial law does not prescribe any time limit for appropriate government to exercise its power under section 10 of the Act. On the other hand it is emerging from the evidence of the parties that the disputants were raising their grievances before the Management with a hope of settlement and they were not solely responsible for such delay in reference of the dispute. Even there is a time lag of nine years for raising the dispute and no credible documents/evidence were appearing on record for such abnormal delay, it seems that the disputants had raised the industrial dispute few years after their disengagement when their co-workers were regularized in the services of the Management and it is in evidence that they kept on making representations to various authorities before taking recourse of raising disputes before the labour machinery. In that view of the matter the dispute raised by the disputants cannot be out-rightly rejected.

13. Coming to the point of relief to which the disputants are entitled to it is not out of place to mention here that as per the decision of the Hon'ble Apex Court in recent past when the termination is set aside on the ground of violation of Section 25-F of the Act, it is not necessary that relief of reinstatement is to be given as a matter of right. It is settled that in cases where the workman is stated to have worked temporarily and worked merely for a period of few years and where the termination was taken place many years ago compensation in lieu of reinstatement is the appropriate relief. Applying the aforesaid principle let us discuss the present case. Indisputedly, the disputants were employed for a consolidated wages of a meagre amount. The termination took place more than 25 years ago. They worked for only two to four years. The disputants were not in employment and they were retrenched more than three years ago when services of their counter-parts were regularized as per settlement held in 1994. The above facts are relevant when it comes to giving the reliefs to the disputants. For all these reasons I am of considered view that ends of justice would be met by granting compensation of Rs. 50,000/- (rupees Fifty Thousand only) to each disputants in lieu of their reinstatement. This compensation should be paid within two months of the publication of the award failing which the disputants are entitled to simple interest at the rate of 10% per annum from the date of the award.

14. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1557.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 90/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9.10.2018 को प्राप्त हुआ था।

[सं. एल-17012/6/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Management M/s. Life Insurance Corporation of India and their workmen, which was received by the Central Government on 9.10.2018.

[No. L-17012/6/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT AT
HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 24th day of September, 2018**INDUSTRIAL DISPUTE No. 90/2014****Between:**

Sri Md. Himayat Mohiuddin,
H.No.18-12, Near SC Boys Hostel,
Mamindlawada, Huzurabad,
Karimnagar Dist..
Karimnagar – 505469.

... Petitioner

AND

1. The Zonal Manager,
LIC of India, Zonal Office,
Opp. Secretariat,
Saifabad, Hyderabad – 500 004.
2. The Sr. Divl. Manager,
LIC of India,
Divl. Office,
Karimnagar (A.P.) – 505001.
3. The Branch Manager,
LIC of India,
Hazurabad Branch, Hazurabad,
Karimnagar (A.P.) – 505468.

... Respondents

Appearances:

For the Petitioner : M/s. S. Bhagavanth Rao and S.V. Rama Devi, Advocates

For the Respondent : Sri K. Rama Lingeswara Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/6/2014-IR(M) dated 12.5.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Life Insurance Corporation of India, Zonal Office, Hyderabad / Divisional Office, Karimnagar and Branch Office, Huzurabad, Karimnagar Dist., in terminating the services after crossing 240 days continuous service of Sri Md. Himayat Mohiuddin, Ex.Temp. Substaff of LIC of India, Metpally Br. w.e.f. 1.2.2013 is justified or not? If not, to what relief the applicant is entitled for ?”

The reference is numbered in this Tribunal as I.D. No. 90/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondents. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of September, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of Evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद पंचाट के (संदर्भ संख्या 218/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9.10.2018 को प्राप्त हुआ था।

[सं. एल-17012/117/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 218/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management, M/s. Life Insurance Corporation of India and their workmen, which was received by the Central Government on 9.10.2018.

[No. L-17012/117/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT AT HYDERABAD**

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 10th day of September, 2018

INDUSTRIAL DISPUTE No. 218/2014

Between:

Sri Manchala Punnam Chander,
H.No.10-1-293,
G.R. Gutta,
Warangal.

... Petitioner

AND

1. The Zonal Manager,
LIC of India, Zonal Office,
Opp. Secretariat,
Saifabad, Hyderabad – 500 004.
2. The Sr. Divl. Manager,
LIC of India, Divl. Office,
Balasamudram, Hanamkonda,
Warangal Dist.

... Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : Sri B.S. R. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/117/2014-IR(M) dated 9.10.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India, Divisional Office and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Life Insurance Corporation of India, Zonal Office, Hyderabad / Divisional Office, Hanamkonda, Warangal Dist., in terminating the services after crossing 240 days continuous service of Sri Manchala Punnam Chander, Ex-Temp. Sub staff LIC of India, Divisional Office, Hanamkonda Br. w.e.f. 1.2.2013 is justified or not? If not, to what relief the applicant is entitled to ?”

The reference is numbered in this Tribunal as I.D. No. 218/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner workman to attend the court to prosecute his case. But, the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 10th day of September, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of Evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 229/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9.10.2018 को प्राप्त हुआ था।

[सं. एल-17012/126/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 229/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the

Management, M/s. Life Insurance Corporation of India and their workmen, which was received by the Central Government on 9.10.2018.

[No. L-17012/126/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 10th day of September, 2018

INDUSTRIAL DISPUTE No. 229/2014

Between :

Sri V. Kishore Kumar,
S/o V. Prakasa Rao,
Kothapudi (V),
Manginapudi (P.O.), Bandar (M),
Krishna Distt..

... Petitioner

AND

1. The Sr. Divisional Manager,
LIC of India, Divisional Office,
Kennedy Road,
Machilipatnam – 521001.
2. The Branch Manager,
LIC of India, CB-II Branch,
Swarnalok Complex, Eluru Road,
Governorpet, P.B. No.318,
Vijayawada – 520 002.

... Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : Sri B.S. R. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/126/2014-IR(M) dated 28.10.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India, Divisional Office and their workman. The reference is,

SCHEDULE

“Whether the removal from service of Sri V. Kishore Kumar, Ex-Temp. Class-IV LIC of India, Machilipatnam, CB-II Branch w.e.f. 21.01.2013 is legal and justified? If not, to what relief the workman is entitled to ?”

The reference is numbered in this Tribunal as I.D. No. 229/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several notices were served to the Petitioner, but, in spite of service of notice, the Petitioner remained absent. Petitioner failed to file claim statement and documents. This is a case of the year 2014. The Respondents have already appeared. Non-appearance of the Petitioner and non-filing of claim statement in time, clearly indicates that perhaps the parties have settled their dispute and the Petitioner has no claim to raise. Hence, it is not desirable to linger the case to any further date. Thus, the case of the Petitioner is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 10th day of September, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of Evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 01/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Management,

M/s. Indian Oil Corporation Ltd. and their workmen, which was received by the Central Government on 5.10.2018.

[No. Z-16025/4/2018-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA****Misc. Application No.01 of 1999**

U/S. 33A of the I.D. Act, 1947

(Arising out of Reference No. 92 OF 1980)

Partiest: Shri Ram Krishna Paul,
Regd. No. 33989, I.O.C. Ltd. (AOD), Digboi,
Resident of Radha Gobinda Road,
P.O. Digboi, Dist. Tinsukia,
Assam – 786171

...Applicant

Vs.

Indian Oil Corporation Ltd.,
(Assam Oil Division)
P.O. Digboi, Dist. Tinsukia,
Assam – 786171.

...Opp. Party

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : Mr. N. K. Metha, learned counsel with
Mr. S. K. Sharma, learned counsel

On behalf of the Opp. Party : Mr. S. H. Quader, Ld. Counsel
State: National Industry: Petroleum.

Dated: 24th August, 2018

AWARD

Factual background of this application under Section 33A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act of 1947) is that the Complainant Shri Ram Krishna Paul being an employee under the Opposite Party Indian Oil Corporation Ltd. was served with copy of chargesheet dated 14th August, 1996 directing him to show cause. The Complainant submitted his reply on 23rd October, 1996. Thereafter he was again served with another chargesheet dated 27th November, 1996 and a domestic enquiry was directed under the Enquiry Officer Shri P.C. Sonowal who initiated the enquiry. On conclusion of domestic enquiry a report was submitted to the disciplinary authority who concurring with the finding of the Enquiry Officer dismissed the Complainant from service of the Corporation with effect from 29th December, 1997. An application was also filed by the Corporation under Section 33(2)(b) of the Act of 1947 for approval of dismissal of the Complainant which was disposed of by this Tribunal on 19th April, 2002. Thereafter the present application under Section 33A of the Act of 1947 was filed by the Complainant with a prayer to set aside and to quash the dismissal order dated 29th December, 1997 with a direction to the Opp. Party to reinstate him in service with full back wages alleging that during enquiry proceeding neither the Enquiry Officer, nor the management gave any document to him. Therefore, he was handicapped to defend himself properly; he was also not given sufficient notice to produce witnesses; from the enquiry report the Complainant cannot be said to be involved in the misappropriation of money in as much as he was only authorized to prepare vouchers as per certificate of payment or relevant order and all the AOP were approved by the respective officers, but without considering this vital fact, the Enquiry Officer concluded to hold the Complainant guilty.

2. The Corporation submitted its reply pleading inter alia that the very foundation of application under Section 33A is wholly absent in the present case, there being no contravention at all of provisions of Section 33 of the Act of 1947. The Complainant while in employment of the Opp. Party committed certain acts of misconduct. Consequently after serving chargesheet, enquiry was conducted and having been found guilty of serious charges, he was dismissed from service and on the very date of dismissal the Opp. Party tendered to the Complainant one month's salary and forwarded to the Tribunal an application under Section 33(2)(b) of the Act of 1947 for approval of the dismissal. Thus provision of Section 33(2)(b) of the Act of 1947 were sufficiently complied with. Dismissal of the Complainant has been claimed to be very much maintainable in eye of law and the application under Section 33A of the Act of 1947 is wholly misconceived and liable to be dismissed.

3. I have heard the learned counsel for both the parties and have gone through the oral as well as documentary evidence available on record.

4. Learned counsel for the Complainant has argued that the Corporation has violated the provisions of Section 33(2)(b) of the Act of 1947. Therefore, the dismissal of the Complainant is not sustainable and is liable to be quashed. So far as compliance of provisions of Section 33(2)(b) of the Act of 1947 is concerned, perusal of records shows that at the time of dismissal of the Complainant two references were pending before this Tribunal bearing Reference No. 59 of 1978 and Reference No. 92 of 1980. Both references were regarding payment of bonus to the employees. The Corporation, however, moved an application for approval of dismissal of the Complainant in Reference No. 59 of 1978. Thereafter, it came to the knowledge of the Corporation that Reference No. 59 of 1978 was since disposed of while Reference No. 92 of 1980 only was pending. The Corporation moved an amendment application praying for approval to the effect that in place of 59 of 1978 it may be allowed to make mention of 92 of 1980 which was by the time pending. The prayer of Corporation to amend the reference number was not allowed by the Tribunal. However, this Tribunal vide order dated 19th April, 2002 held that there has been substantial and constructive compliance of Section 33(2)(b) of the Act of 1947 and therefore, the application under Section 33A was directed to be heard on merit to decide whether the dismissal of the workman was justified or not. Thus in view of order dated 19th April, 2002 the dismissal of the Complainant cannot be held to be bad for non-compliance of provisions of Section 33(2)(b) of the Act of 1947.

5. Placing reliance on *Straw Board Manufacturing Co. v. Gobind*, 1962-I-LLJ 420 learned counsel for the complainant has contended that since action of the company against the complainant has not been approved by the Tribunal, the workman concerned would be deemed never to have been dismissed and would remain in service. But contention of the learned counsel for the complainant is not acceptable in view of order dated 19.04.2002 passed by the Tribunal whereby provisions of Section 33(2)(b) of the Act of 1947 have been held to be substantially and constructively complied with.

6. The learned counsel for the Complainant has also argued that the workman concerned was issued two chargesheets dated 14th August, 1996 and 27th November, 1996 on false, fabricated and baseless allegations in which he was not given any opportunity to submit any reply to the second chargesheet because the same was served upon him during the course of enquiry. It is also alleged that the domestic enquiry was held contrary to the principles of natural justice. Enquiry Officer has not issued any notice to the Complainant to produce witness and to record their evidence. Enquiry Officer conducted the enquiry proceedings in a very perfunctory manner and the findings of the Enquiry Officer were perverse. Though the learned counsel for the Complainant has challenged the enquiry report, but it may be mentioned here that validity of enquiry report has already been upheld by this Tribunal vide its order dated 27th January, 2012. Now the same cannot be re-agitated.

7. Elaborating the ambit and scope of judicial review by Industrial Tribunal under Section 11-A of the Act of 1947, the Hon'ble Apex Court has, in *Management of Bharat Heavy Electricals Ltd. v. M. Mani & Anr.*, 2018 LLR 2 held

where departmental enquiry is held legal and proper, then the only question remains for consideration is whether punishment of dismissal requires any interference? The relevant portion of the judgment may be reproduced for better appreciation of the controversy as below:

“17. In our opinion, once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of “dismissal” imposed by the appellant to the respondents was legal and proper or it requires any interference in its quantum.

18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Disputes Act, 1947.”

8. In Life Insurance Corporation of India v. R. Dhandapani, 2006(108) FLR 953 it has been observed by the Hon’ble Apex Court that the Tribunal has power to reduce the quantum of punishment, but power under Section 11-A has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned.

9. In the background of above legal principles laid down by the Hon’ble Apex Court the facts of the instant case have to be analyzed. The concerned workman, Shri Ram Krishna Paul was chargesheeted for preparing false authorization of payment vouchers amounting Rs.5,42,009/=. Subsequent chargesheet was also issued against him for deceiving the Corporation to the extent of Rs.28,45,531/= by using various methods of falsification and manipulation of documents in collusion with M/s. S.B. Construction. The charges leveled against the concerned workmen were found to be proved during enquiry. Now as per principles laid by the Hon’ble Supreme Court the only question which remains to be examined after enquiry is whether the punishment awarded to the concerned workmen is shockingly disproportionate looking into the gravity of charge leveled against the concerned workman. Where a workman is found guilty of embezzlement of approximately Rupees thirty-three lakh, it is certainly a matter which disturbs confidence of employer and causes harm to the industry and industrial peace. In such cases the workman concerned does not deserve any sympathy. This is what has been observed by the Division Bench of the Hon’ble Kerala High Court on analysis of various judgments of Hon’ble the Apex Court in Federal Bank Employees Union, Aluva v. Federal Bank of India, Aluv & Ors., 2008 LLR 758. The relevant portion of the judgment may be reproduced as below:

“6..... Labour Courts and Industrial Tribunals cannot act as a benevolent dictator and grant relief indiscriminately. Misplaced sympathy to wrong doers may do more harm to the industries. Industrial peace, harmony, power of the management to run the establishment etc., cannot be forgotten by the Tribunals or Labour Courts. The workmen found guilty of misconduct shall not be unpunished. But, punishment shall be in proportion to the misconduct proved. Power under section 11A to interfere with punishment should be imposed sparingly in compelling circumstances as power to take disciplinary action is essentially a managerial function. If the Labour Court or Tribunal for cogent reason finds that the punishment is too harsh, certainly, it has now power to interfere with the punishment and grant appropriate relief. If the misconduct is proved in a proper domestic enquiry or before the Labour Court itself, the Labour Court has power to interfere with the punishment only if the punishment is too harsh and grossly disproportionate to the misconduct proved.....”

10. Justifying the punishment of dismissal, in such cases, Hon’ble the Apex Court has held in Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane, 2004 (103) FLR 428 has held as under:

“Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriate that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the Corporation’s funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”

11. Further, the action of the management in dismissing the concerned workman, where charges of corruption are proved against the workman, is also justified by the observations of the Hon’ble Apex Court in Rajasthan SRTC v. Bajrang Lal, (2014) 4 SCC 693 which is as under:

“21. As regards the question of disproportionate punishment is concerned, the issue is no more res integra. In U.P. SRTC v. Suresh Chandra Sharma, it was held as under: (SCC p. 715, para 4)

22. In Municipal Committee, Bahadurgarh v. Krishnan Behari this Court held as under: (SCC p. 561, para 4)

‘4.In a case of such nature – indeed, in cases involving corruption – there cannot any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.’

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam, U.P. SRTC v. Basudeo Chaudhary, Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha, Karnataka SRTC v. B.S. Hullikatti and Rajasthan SRTC v. Ghanshyam Sharma.”

22. *In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.*

11. In view of the above, where the concerned workman, Shri Ram Krishna Paul has been held guilty of embezzlement of money to the tune of approximately Rupees thirty-three lakh in departmental enquiry, I do not find any justification of interference with the action of the management in dismissing him. Therefore, the application under Section 33A of the Industrial Disputes Act, 1947 is liable to be dismissed and accordingly dismissed.

Dated, Kolkata,

The 24th August, 2018

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स लायोड इन्सुलेशन, कॉन्ट्रैक्टर ऑफ इण्डियन ऑयल कॉर्पोरेशन लिमिटेड, हल्दिया रिफाइनरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 08/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-30011/43/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the industrial dispute between the employers in relation to the Manager,

M/s. Lloyed Insulation, Contractor of India Oil Corporation Ltd., Haldia Refinery and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-30011/43/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 08 of 2016

Parties: Employers in relation to the management of Haldia Refinery

AND

Their workmen

Present : Justice Ravindra Nath Mishra

...Presiding Officer

Appearance:

On behalf of the Management : Mr. N.K. Mehta, Ld. Counsel with Mr. S. Sharma, learned Counsel

On behalf of the Workmen : None

State: West Bengal Industry: Petroleum

Dated: 27th September, 2018

AWARD

By Order No.L-30011/43/2015-IR(M) dated 20.01.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the Management of M/s. Lloyed Insulation, contractor of IOCL, Haldia Refinery, in denying the nine points of charter of demand raised by the union legal and/or justified? If not, what relief the workmen are entitled to?”

2. After receipt of order of reference, notices were issued to the parties. In compliance to which the union and management of Haldia Refinery appeared before this Tribunal, but instead of filing statement of claim the union moved an application dated 26.07.2018 to the effect that with the pay revision for the subsequent period, the dispute regarding pay revision for the earlier period has become infructuous and there is no justification to continue adjudication of the same. Therefore, the General Secretary of the union requested to dispose of the case in the light of above.

3. Learned counsel appearing for the management of Haldia Refinery has no objection for disposal of the case as no dispute exists.

4. From the perusal of order of reference it transpires that IOCL Thika Mazdoor Union had raised 9 points of charter of demand before the management of M/s. Paira Electrical Construction which is a contractor of IOCL, Haldia Refinery, but the same was denied by the management resulting in reference of this dispute. As the pay revision has already taken place which was one of the points in the charter of demand and no other point has been pressed by the union, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

Dated, Kolkata,

The 27th September, 2018

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स पेरा इलेक्ट्रिकल कन्स्ट्रक्शन, कॉन्ट्रैक्टर ऑफ इण्डियन ऑयल कार्पोरेशन लिमिटेड, हल्दिया रिफाइनरी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 13/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-30011/49/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the industrial dispute between the employers in relation to the Manager,

M/s. Paira Electrical Construction, Contractor of India Oil Corporation Ltd., Haldia Refinery and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-30011/49/2015- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 13 of 2016

Parties : Employers in relation to the management of Haldia Refinery

AND

Their workmen

Present : Justice Ravindra Nath Mishra

...Presiding Officer

Appearance:

On behalf of the Management : Mr. N.K. Mehta, Ld. Counsel with Mr. S. Sharma, learned Counsel

On behalf of the Workmen : None

State : West Bengal Industry: Petroleum

Dated: 17th September, 2018

AWARD

By Order No.L-30011/49/2015-IR(M) dated 20.01.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the Management of M/s. Paira Electrical Construction, contractor of IOCL, Haldia Refinery, in denying the nine points of charter of demand raised by the union legal and/or justified? If not, what relief the workmen are entitled to?”

2. After receipt of order of reference, notices were issued to the parties. In compliance to which the union and management of Haldia Refinery appeared before this Tribunal, but instead of filing statement of claim the union moved an application dated 26.07.2018 to the effect that with the pay revision for the subsequent period, the dispute regarding pay revision for the earlier period has become infructuous and there is no justification to continue adjudication of the same. Therefore, the General Secretary of the union requested to dispose of the case in the light of above.

3. Learned counsel appearing for the management of Haldia Refinery has no objection for disposal of the case as no dispute exists.

4. From the perusal of order of reference it transpires that IOCL Thika Mazdoor Union had raised 9 points of charter of demand before the management of M/s. Paira Electrical Construction which is a contractor of IOCL, Haldia Refinery, but the same was denied by the management resulting in reference of this dispute. As the pay revision has already taken place which was one of the points in the charter of demand and no other point has been pressed by the union, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

Dated, Kolkata,

The 17th September, 2018

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स यूरेनस इन्टरप्राइजेज, कॉन्ट्रैक्टर ऑफ इण्डियन ऑयल कॉर्पोरेशन लिमिटेड, हल्दिया रिफाइनरी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 15/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-30011/42/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the industrial dispute between the employers in relation to the Manager,

M/s. Uranus Enerrises, Contractor of India Oil Corporation Ltd., Haldia Refinery and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-30011/42/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 15 of 2016**Parties:** Employers in relation to the management of Haldia Refinery**AND**

Their workmen

Present : Justice Ravindra Nath Mishra

...Presiding Officer

Appearance:

On behalf of the Management : Mr. N.K. Mehta, Ld. Counsel with Mr. S. Sharma, learned Counsel

On behalf of the Workmen : None

State: West Bengal.

Industry: Petroleum

Dated: 18th September, 2018**AWARD**

By Order No.L-30011/42/2015-IR(M) dated 20.01.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the Management of M/s. Uranus Enterprises, contractor of IOCL, Haldia Refinery, in denying the nine points of charter of demand raised by the union legal and/or justified? If not, what relief the workmen are entitled to?”

2. After receipt of order of reference, notices were issued to the parties. In compliance to which the union and management of Haldia Refinery appeared before this Tribunal, but instead of filing statement of claim the union moved an application dated 26.07.2018 to the effect that with the pay revision for the subsequent period, the dispute regarding pay revision for the earlier period has become infructuous and there is no justification to continue adjudication of the same. Therefore, the General Secretary of the union requested to dispose of the case in the light of above.

3. Learned counsel appearing for the management of Haldia Refinery has no objection for disposal of the case as no dispute exists.

4. From the perusal of order of reference it transpires that IOCL Thika Mazdoor Union had raised 9 points of charter of demand before the management of M/s. Paira Electrical Construction which is a contractor of IOCL, Haldia Refinery, but the same was denied by the management resulting in reference of this dispute. As the pay revision has already taken place which was one of the points in the charter of demand and no other point has been pressed by the union, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

Dated, Kolkata,

The 18th September, 2018

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1564.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स बी.बी.सी. कन्स्ट्रक्शन कंन्ट्रैक्टर ऑफ इण्डियन ऑयल कार्पोरेशन लिमिटेड, हल्दिया रिफाइनरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 16/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-30011/45/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of, M/s. B.B.C. Construction, Contractor of India Oil Corporation Ltd., Haldia Refinery and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-30011/45/2015– IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 16 of 2016

Parties : Employers in relation to the management of Haldia Refinery

AND

Their workmen

Present : Justice Ravindra Nath Mishra

...Presiding Officer

Appearance:

On behalf of the Management : Mr. N.K. Mehta, Ld. Counsel with Mr. S. Sharma, learned Counsel

On behalf of the Workmen : None

State: West Bengal.

Industry: Petroleum

Dated: 18th September, 2018

AWARD

By Order No.L-30011/45/2015-IR(M) dated 20.01.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the Management of M/s. B.B.C. Construction, contractor of IOCL, Haldia Refinery, in denying the nine points of charter of demand raised by the union legal and/or justified? If not, what relief the workmen are entitled to?”

2. After receipt of order of reference, notices were issued to the parties. In compliance to which the union and management of Haldia Refinery appeared before this Tribunal, but instead of filing statement of claim the union moved an application dated 26.07.2018 to the effect that with the pay revision for the subsequent period, the dispute regarding pay revision for the earlier period has become infructuous and there is no justification to continue adjudication of the same. Therefore, the General Secretary of the union requested to dispose of the case in the light of above.

3. Learned counsel appearing for the management of Haldia Refinery has no objection for disposal of the case as no dispute exists.

4. From the perusal of order of reference it transpires that IOCL Thika Mazdoor Union had raised 9 points of charter of demand before the management of M/s. Paira Electrical Construction which is a contractor of IOCL, Haldia Refinery, but the same was denied by the management resulting in reference of this dispute. As the pay revision has already taken place which was one of the points in the charter of demand and no other point has been pressed by the union, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

Dated, Kolkata,

The 18th September, 2018

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1565.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स भारतीय विमानपत्तन प्राधिकरण के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 173/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-11011/14/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 173/2015) of the Central Government Industrial Tribunal-cum-Labour Court-2, Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of,

M/s. Airport Authority of India and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-11011/14/2015- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. II, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 173/2015

General Secretary
Airport Authority of India Mazdoor Sangh,
Flat No.166, DDA SFS Flats,
Sector 1, Pocket-II, Dwarka,
New Delhi 110075.

... Workmen/Claimant Union

Versus

The Executive Director (HR),
Airport Authority of India,
Rajiv Gandhi Bhawan,
Safdarjang Airport,
New Delhi 110003.

... Management/Respondent

AWARD

This Award shall decide a reference which was made to Central Government Industrial Tribunal cum Labour Court No. 2, New Delhi by the appropriate Government vide letter No.L-11011/14/2015-IR(M) dated 06.11.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the management of Airport Authority of India in not fulfilling the following demands of the workmen of Airport Authority of India is legal and justified:—

1. Periodical training to the workmen of the Authority.
2. Formulation of incentive and other beneficiary scheme for the employees of AAI to be paid against his/her performance.
3. Irrespective of cadre vacancy, all workmen be given the next higher scale of NE-3 on completion of 6 years service in the pay-scale of E-2 to remove stagnation.
4. Irrespective of cadre vacancy, all workmen be given the next higher scale of NE-6 on completion of 6 years service in the pay scale of NE-5 to remove stagnation.
5. Irrespective of cadre vacancy, all workmen be granted next higher scale on completion of 6 years service in the scale to remove stagnation.
6. Promotion of Sr.Asistant (Operator) of erstwhile IAD to the grade of Superintendent (Operator) instead of placing them to the post of Supervisor (Operator).

If not what relief are the workmen entitled to ?

2. Both parties were put to notice and the claimant Union filed its statement of claim, with the averments that the claimant Union had served strike notice dated 27/9/13 to the Management communicating its intention to resort to strike w.e.f 25/11/2013 in the case the Management failed to discuss and settle the issues vis-a-viz periodical training, formulation of incentive and beneficial scheme, grant of CCL, removal of stagnation, extension of pay fixation benefits, promotions and pension scheme etc. The notice of strike was seized in conciliation. The management submitted written comments vide its letter dated 18/7/2014 conveying the status of all the demands of the Union whereby some of its demands of the Claimant Union were met and some were ignored & neglected. It is claimed that it is the duty of the Management to introduce uniform placement/promotion policy for its employees to avoid stagnation in the same scale for more than 6 to 12 year. Prayer has been made for passing of Award on the demands of the claimant and Management be directed to introduce placement/promotion policy for the workmen for grant of next higher scale on completion of 6 years' service in the scale irrespective of vacancies in their respective cadres.

3. Management resisted the claim of the Claimant Union, by filing written reply and took preliminary objections that the claim is not maintainable as the claimant Union is not a recognized Union. It is stated that issues relating to the employees and policy matters are discussed by the Management with the recognized Union which is elected through elections for a period of five years. It has been alleged that issue of finalization of Productivity Linked Incentive is under process/active consideration and that promotions of the employees are being made as per the R& P Guidelines. Hence prayer has been made for rejection of the claim petition.

4. On the pleadings of the parties, following issues were framed on 24/4/2017 :—

- 1) 'Whether the action of the management of Airport Authority of India in not fulfilling the following demands of the workmen of Airport Authority of India is legal and justified -1) Periodical training to the workmen of the Authority. 2) Formulation of incentive and other beneficiary scheme for the employees of AAI to be paid against his/her performance. 3) Irrespective of cadre vacancy, all workmen be given the next higher scale of NE-3 on completion of 6 years service in the pay-scale of E-2 to remove stagnation 4) Irrespective of cadre vacancy, all workmen be given the next higher scale of NE-6 on completion of 6 years service in the pay scale of NE-5 to remove stagnation. 5) Irrespective of cadre vacancy, all workmen be granted next higher scale on completion of 6 years service in the scale to remove stagnation. 6) Promotion of Sr.Asistant (Operator) of erstwhile IAD to the grade of Superintendent (Operator) instead of placing them to the post of Supervisor (Operator) ? If so, its effect ?.
- 2) Whether the claimant Union has any locus to file the present statement of claim, not being the recognized Union as per the judgement dated 17/3/2016 ? if so, its effect ?
- 3) To what relief are workmen entitled to ?

5. Number of opportunities were granted to the Claimant Union to lead evidence in support of the claim but it failed to adduce any evidence. No witness has been examined by the claimant Union either to substantiate the averments made in the claim petition or to rebut the case of the Management that the claimant Union has no locus standi to file the present claim petition. Perusal of the record shows that the claimant Union stopped participating in the proceedings from 19/12/2017 onwards despite the fact that matter was adjourned time and again and ultimately this Tribunal was constrained to reserve the matter for passing the award.

7. In view of the fact that the claimant Union has not led any evidence in support of its case, this Tribunal is constrained to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant Union to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which it is otherwise entitled to. Award is passed accordingly.

AVTAR CHAND DOGRA, Presiding Officer

Dated : 10.9.2018

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1566.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 07/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-29012/48/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of M/s. Steel Authority of India Limited and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-29012/48/2013– IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT : Shri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 07 OF 2014

PARTIES : The management of SAIL, ISP, Burnpur

V/s

Shri Phul Kumar Choubey

REPRESENTATIVES :

For the Management : Shri N. Ganguly, Learned Advocate

For the Workman : Shri Phul Kumar Choubey (Workman)

INDUSTRY : STEEL STATE : WEST BENGAL

Dated : 17.09.2018

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-29012/48/2013–IR(M) dated 02.04.2014 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of General Manage (P&A), SAIL, ISP, Burnpur, in terminating the services of Shri Phul Kumar Choubey w.e.f. 28.01.2013 is legal and justified? What relief the workman is entitled to?”

1. Having received the Order NO. L-29012/48/2013–IR(M) dated 02.04.2014 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 07 of 2014 was registered on 23.04.2014. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.
2. Case called out. Shri N. Ganguly, Learned Advocate appeared on behalf of the SAIL, ISP, Burnpur but the workman was absent.
3. On perusal of the case record I find that the case was fixed for filing evidence of the workman on 13.05.2015. Thereafter 10 (Ten) dates have passed and the workman only appeared twice. The workman, who conducts the case himself appeared before the court on 13.05.2015, 18.02.2016 and also 12.05.2016 and every time he was asked to file his evidence but he failed to do so. Registered notice was also issued to him on 17.12.2015 but all in vain. It seems to me that the workman does not want to proceed with the case further. Hence the case is closed and accordingly a ‘No Dispute Award’ is hereby passed.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2018

का.आ. 1567.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स अल्ट्राटेक सीमेंट लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 36/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5.10.2018 को प्राप्त हुआ था।

[सं. एल-29011/14/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th October, 2018

S.O. 1567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2016) of the Central Government Industrial Tribunal-cum-Labour Court-2, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of M/s. Ultratech Cement Limited and other and their workmen, which was received by the Central Government on 5.10.2018.

[No. L-29011/14/2016- IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh**

Present : A.C. Dogra, Presiding Officer

Case No. 36/2016

Registered on 24.02.2017

The General Secretary, Ultratech Cement Contractor Workers Union

(UCCWU), VPO-Mehraj, Patti Karamchand, Bathinda (Punjab)-151101

...Applicant

Versus

1. The Unit Head, M/s. Ultratech Cement Ltd., Lehra Mohabat, Bathinda(Punjab), Pin Code-151111.

2. M/s. N.K. Sharma & Sons, 4&5, Gangadhar Housing Society-2,

Behind Mahila Hospital, Hotgi Road, Solapur-413003.

...Respondents

Vide Order No.L-29011/14/2016-IR(M), dated 13.02.2017, the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

"Whether the action of the management of Ultratech Cement Ltd., Bathinda for disallowing Shri Arvind Mishra, Workman/office bearer of trade union in the establishment of Ultratech Cement Ltd., Bathinda resulting thereby the discontinuation of job w.e.f. 02.11.2015 is legal and justified. If not, to what relief the workman is entitled to and from which date?"

1. Both the parties were issued notice as such, they appeared before this Tribunal. Upon appearance, both the parties have stated that there is possibility of conciliation and negotiation between the parties is going on. Thereafter, workman Arvind Mishra, vide his separate statement has stated that he has amicably settled the matter with the management and do not want to pursue the present reference. The workman prayed to the Court that the reference be decided in the light of settlement arrived at between the parties. The statement of Sh. Chander Kant Pandey was recorded

in the other case, who has been authorized by the management in ID No.189/2016 and he has also admitted the statement of the workman and further stated that workman Sh. Arvind Mishra has finally settled the matter with the management. Photocopy of statement of Sh. Chander Kant Pandey is also retained in this case. The management is ready to take back the workman in job. The affidavit of the workman is Ex.WW1/A.

2. It is now well settled position in law that any settlement arrived at between the parties is legally binding upon both the parties in terms of the provisions of Section 18 of the ID Act. In view of the amicable settlement, there is no requirement to proceed with the present reference. Statement of the parties as well as affidavit Ex.WW1/A shall form the integral part of the Award.

3. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

Dated :03.07.2018

Place :Chandigarh

A.C. DOGRA, Presiding Officer-cum-Link Officer

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1568.—राष्ट्रपति, न्यायाधीश (सेवानिवृत्त) रन्दि नाथ मिश्रा-II पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय/राष्ट्रीय औद्योगिक अधिकरण, कोलकाता को दिनांक 06.10.2018 से छः माह की आगे की अवधि तक अथवा नियमित आधार पर पद भरे जाने तक अथवा अगले आदेशों तक, जो भी पहले हो, केन्द्रीय सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय/राष्ट्रीय औद्योगिक अधिकरण, मुंबई-I के पीठासीन अधिकारी के पद का अतिरिक्त प्रभार सौंपते हैं।

[सं. अ-11016/3/2015-सीएलएस- II]

अजय मलिक, अवर सचिव

New Delhi, the 23rd October, 2018

S.O. 1568.—The President is pleased to extend the period of additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court/National Industrial Tribunal, Mumbai-I entrusted to Justice (Retd.) Ravindra Nath Mishra-II, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court/National Industrial Tribunal, Kolkata for a further period of six months with effect from 06.10.2018 or till the post is filled on regular basis or until further orders, whichever is the earliest.

[No. A-11016/03/2015-CLS-II]

AJAY MALIK, Under Secy.

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, सेन्ट्रल बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, औरंगाबाद के पंचाट (संदर्भ संख्या 12/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Aurangabad now as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 23.10.2018.

[No. L-39025/01/2017- IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE THE JUDGE, LABOUR COURT AURANGABAD**

(Presided over by D.V. Joshi)

REFERENCE (IDA) No. 12/2016

(CNR: MH-LC-20-000434-2016)

Dispute between :

Central Bank of India,
Through: its Regional Manager,
Aurangabad Region, Aurangabad & 5 others

....First Party/Employer

And

Ajitkumar Motilal Kasliwal,
Raj Galaxy, Flat No. B-4,
Cidco, Aurangabad

... Second party/workman

Advocates:

Mr. S.S.Vidwauns for first party/employer
Mr. U.V.Khonde, for second party/workman

Order on Preliminary Issues (Award Part-I)

(Dtd. 19.09.2018)

1. This reference is send by the Central Government of India, under section 10(2) Sub 2-A 1(d) of the I.D.Act, 1947 for adjudication of dispute in respect of dismissal of second party/workman.
2. According to the second party, the case of the second party that the first party No.1 was the Regional Manager, the first party No.2 is Disciplinary Authority, the First party No.3 is an Appellate Authority, the first party No.04 is the Apex Authority of the Bank. The first party No.5 & the first party No. 6 are the Disciplinary Authority. The second party was working with first party as a Peon from 03/10/1984 as a daily wager. He became permanent w.e.f. 01/01/1994 at Mondha Branch Aurangabad. He was promoted as Cash Peon w.e.f. 30/01/1995. His entire service record was clean and blotless. His work was appreciated by the first party on many occasions. The Second party was met with an accident and said fact was intimated to the first party. After pathological test, Hepatitis-B was detected and he was taking treatment from Sainath Hospital. He was also suffering from Diabetes and Hypertension which requires life time treatment. One Super Specialist Gastroenterology Dr. Nageshwar Reddy and Dr.Umesh Takalkar issued letter dtd. 01/02/2009 mentioning that the second party is patient of Hepatitis with HsAg Positive disease. The Doctor prescribes Tab. Entacavir.5mgBD continuous for one year. He purchased the said tablets from 'Nayan Medical & General Stores Hudco, Aurangabad. After submissions of medical certificate, tablet bills, the bank used to reduce the bills. He was referred to Medical Board. The second party made complaint of A.C. Prakash about intentional delay of sanction of Bill and on that count only, the disciplinary action was taken against second party. The said departmental enquiry was with malafide intention and with ulterior motive with revengeful attitude. The first party issued memo on 02/01/2014. Later on charge sheet was issued on 04/02/2014. The charges were under clause 5-j of Memorandum of settlement dtd. 10/04/2002 on disciplinary action procedure for workman. The main allegations against the second party that he acted prejudicial to interest of the Bank or gross negligence involving or likely to involve the bank in serious loss. The first party did not wait for reply to the charge sheet and hurriedly initiated enquiry. He was not permitted to appoint Advocate as defence representative. The enquiry officer was sponsored officer. He did not apply his mind for appreciation of evidence. The documents are not provided to the Second party. Therefore, entire enquiry is conducted in violation of principles of natural justice. An Enquiry officer has not considered the entire documents produced by the Second party, therefore, enquiry is illegal and the findings of enquiry officer are perverse.
3. The first party filed his Say cum Written Statement below Ex.C-6. As the Second party has committed serious misconducts, therefore, the bank has conducted the departmental enquiry against the Second party. Each and every opportunity was given to the Second party. The enquiry was conducted according to the principles of natural justice. The Second party claimed that he was suffering from Hepatitis-B since November 2008. Initially, he claimed Rs. 13698/- p.m. from the first party on account of reimbursement of domiciliary claim facility. Later on his bill was continuously increasing and reached to Rs. 29,233/- in October-2012 Rs. 43781/- in May 2013. He paid more than required amount to second party who submitted fabricated and fake bills. On that count, memo was issued. The charge sheet was issued. Each and every opportunity was given to the Second party. The findings of enquiry officer are based on material produced before him. Therefor, the enquiry is proper and findings are not perverse.
4. Issues are framed at Ex.O:2. The issue no. 1 & 2 are in respect of legality and its findings. The same are treated as preliminary issues. They are reproduced as under along with my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1.	Whether the second party proves that the inquiry conducted against him is illegal, improper and void ?	In the Negative
2.	Whether the second party proves that the findings of the inquiry officer are perverse ?	In the Negative
3.	What order ?	As per final order

Reasoning

5. In order to prove the case, the second party examined himself at Ex.U-21. He filed the documents below Ex.U-2, Ex. U-22 and closes his evidence by filing pursis at Ex.U-23. The first party examined one witness viz. Raghvendra Shankarrao Holkar at Ex.C-13. He filed the documents below Ex.C-9, Ex.C-10 & Ex.C-15. He closed his evidence by filing pursis Ex.C-14.

6 The learned Advocate of the second party submitted that the enquiry was conducted in-violation of principles of natural justice. Sufficient opportunity was not given to the Second party. He was not allowed to appoint defense representative. The enquiry officer has not considered the evidence of the Second party. Mere on the basis of assumption, he came to the conclusion, therefore, the enquiry is illegal and findings of the enquiry officers are perverse.

7 The learned Adv of the first party submits that as the second party has committed serious misconducts, the enquiry was conducted against him by adopting the principles of natural justice. Each and every opportunity was given to him to defend himself in the enquiry proceeding. Therefore, the enquiry is proper and the findings of the enquiry officer are not perverse.

8. On perusal of proceedings of enquiry papers filed below Ex.C-9, Ex.C-10 and Ex.U-2. It shows that memo was issued against the second party on 02/01/2014. Four charges were framed against the Second party. The main allegations against the Second party is that he has claimed bill of treatment which was not at all required to him. He submitted the bills of Shop which is not in existence and thereby he was defrauded the bank by submitting the fake bills. He replied to the said memo on 13/01/2014. As the bank has not satisfied to his reply, therefore, the bank issued the charge sheet on 04/02/2014 against the Second party under Para 5-J of the Memorandum of Settlement Dtd. 10/04/2002 on Disciplinary Action Procedure for Workman. The copy of charge sheet and memo in Hindi Translation was provided to the Second party. The notice of enquiry was issued against Second party. On 25/02/2014, the first date of enquiry, he was present before the enquiry officer. The enquiry officer asked the preliminary questions to the Second party. The enquiry officer asked whether he want to appoint defense representative to which the Second party answered that "he wants to appoint the defense representative". He further requested that he was not a member of any union, therefore, he may be permitted to appoint other person as his defense representative. The said request is also granted by the enquiry officer. He was allowed to inspect the entire documents which were produced in the enquiry proceeding. The management examined one witness Narhari Vasude Adgaonkar in presence of Second party. On next date of enquiry i.e 11-03-2014. On oral request of Second party, the short time was granted to appoint defense representative. On 16/04/2014, the request of the Second party short time was granted for appointing defense representative by the enquiry officer. On 21/05/2014, the Second party decided to defend himself in enquiry proceeding and elected not to appoint any defense representative. He was allowed to inspect all the documents. He was allowed to produce the documents in his defense and same is marked as Exhibits and kept in record by the enquiry officer. His request for adjournment for cross examining management witness is also granted by the enquiry officer. The Second party has taken cross examination of the management witness in detail. On 04/06/2014, the Second party was permitted to produce entire documents in his defense and after that he has completed his cross examination. The Second party himself examined in the enquiry proceeding. He was cross examined by the management. On 25/06/2014, opportunity was given to the Second party to examine the witness in his defense. But the Second party failed to bring any witness and he himself given the statement. After that he filed the written statement of his defense and closed his evidence. Thereafter, the enquiry officer recorded his findings.

9 On perusal of record, it shows that each and every opportunity was given to the Second party workman in departmental enquiry. He was present on each and every date of enquiry. The management witness was examined in his presence. He was allowed to cross examine the witness. All the documents were provided to the Second party workman. He signed on each papers of enquiry proceedings. He was allowed to appoint defense representative. But second party himself decided to defend himself in the enquiry proceeding. Therefore, from record it shows that enquiry was conducted by adopting the principles of natural justice.

10. The enquiry officer came to the conclusion by appreciating the entire evidence produced before him. He has considered the evidence of second party workman and all the medical papers including the papers produced by Medical

Board and came to the conclusion. Therefore, the findings of the enquiry officer based on material produced before him. Therefore, I answer issue no. 1 & 2 in negative and pass the following order:

ORDER

- 1 The enquiry is proper and findings of enquiry officer are not perverse.
- 2 The matter be further proceeded to record evidence on remaining issues.
- 3 The four copies of the Award (Part-I) be sent for its publication to the Appropriate Government.

Dtd. 19.09.18

D.V. JOSHI, Presiding Officer & Judge

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 48/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 23.10.2018.

[No. L-12025/01/2018-IR(B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 48/2012

BETWEEN :

Sri Ranveer Singh, S/o Sri Prayagraj Singh
R/o H. No. 416/167, Tularam Bagh
Daraganj, Allahabad 211001

AND

1. General Manager
Northern Railway, Baroda House
New Delhi 110001.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow 226001.
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP) 224001

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal –cum- Labour Court, Lucknow.

2. The case of the workman, Ranveer Singh in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.09.2003 to 25.04.2009 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.

3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.09.2003 to 25.04.2009 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorized representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon :

- (i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998*
- (ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*
- (iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*
- (iv) *(2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

- (i) 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*
- (II) 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/Identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of railways entered into an agreement with M/s Shahid Faizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period or two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor viz. Shahid Faizan in 2003 and worked upto 2009. He admitted that the railway neither appointed nor terminated his services; rather he stated that the Contractor, Shahid Faizan terminated him. He also stated that paper No. 12/5 is identity card, issued by the contractor, Shahid Faizan.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall

apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

“The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of “employer” as defined in the Industrial Disputes Act nor such workman can be held to be a “workman” under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL.”

Hon'ble Allahabad High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

“Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)”

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. 01.09.2003 to 25.04.2009, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. *Yellatti & Asstt. Executive Engineer* as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. 01.09.2003 to 25.04.2009, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration;

but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he was an employee of the contractor viz. M/s Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

LUCKNOW

15th October, 2018.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 46/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018—आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 23.10.2018.

[No. L-12025/01/2018—IR(B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 46/2012

BETWEEN :

Sri Himanshu Sonkar, S/o Sri Pappu Sonkar
351/A, Madhwapur Baihrana
Distt. Allahabad – 211001

AND

1. General Manager
Northern Railway, Baroda House
New Delhi 110001.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow 226001.
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP) 224001.

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal-cum-Labour Court, Lucknow.

2. The case of the workman, Himanshu Sonkar, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.03.2007 to 28.04.2009 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.

3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.03.2007 to 28.04.2009 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorizes representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon

- (i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998*
- (ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*
- (iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*

(iv) (2003)11 SCC 590 A.I. *Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

(i) 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*

(II) 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/Identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of railways entered into an agreement with M/s Shahid Faizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period or two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor on 01.03.2007. He admitted that the railway neither appointed nor terminated his services; rather he stated that the Contractor, Shahid Faizan terminated him and the contractor was allotted contract by the Railways for executing the work. He also admitted that the paper No. 13/3, filed by him is photocopy of the Identity Card, issued by the contractor.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

“The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of “employer” as defined in the Industrial Disputes Act nor such workman can be held to be a “workman” under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL.”

Hon'ble Allahabad High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

“Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)”

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. 01.03.2007 to 28.04.2009, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. *Yellatti & Asstt. Executive Engineer* as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register

etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. 01.03.2007 to 28.04.2009, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e. railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he was and an employee of the contractor viz. M/s Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

RAKESH KUMAR, Presiding Officer

LUCKNOW.

05th October, 2018

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय बॉम्बे मर्केटाइल कोऑपरेटिव बैंक लिमिटेड प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 48/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-12012/169/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Bombay Mercantile Cooperative Bank Ltd. and their workmen, received by the Central Government on 23.10.2018.

[No. L-12012/169/2005- IR(B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 48 of 2005

Parties : Employers in relation to the management of Bombay Mercantile Cooperative Bank Ltd.

AND

Their workmen

Present : Justice Ravindra Nath Mishra

...Presiding Officer

Appearance:

On behalf of the Management : Mr. A Hussain, Ld. Counsel.

On behalf of the Workmen : None

Dated: 8th October, 2018. Industry: Banking.

AWARD

The workman, Shri Fida Mehdi Masoodul Hasan Syed was working as a Driver in Bombay Mercantile Cooperative Bank Ltd. since 17th February, 1998. However, during his service a chargesheet was issued to him on 23rd August, 2004 for misconduct on the allegation that on 4th August, 2004 he shouted at the Branch Manager using abusive language and when intervened, he assaulted him by fists and kicks. A domestic enquiry was held by the Enquiry Officer who submitted his report concluding his guilt. Enquiry Officer also proposed dismissal of the workman concerned. The management of the Bank looking into the gravity and magnitude of the misconduct, dismissed him from service. The dispute being dismissal of workman, the Government of India in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 *vide* order No. L-12012/169/2005-IR(B-I) dated 28.11.2005 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Bombay Mercantile Cooperative Bank Ltd., 89, Mohamedali Road, Mumbai – 400003 in imposing the punishment of ‘Dismissal from the services of the Bank without notice’ on Shri Fida Mehdi Masoodul Hasan Syed (Driver) vide its order No.67/STF/IR/14393 dated 30.12.2004 with immediate effect is legal and justified? If not, to what relief the concerned workman is entitled?”

2. On the factual score, it is depicted by the workman concerned that since joining of his service on 17th February, 1998 he possessed a clean and meritorious service of about 7 years in the Bank. The allegations leveled against him were baseless and concocted. There was no evidence before the Enquiry Officer to hold the workman guilty. The Bank victimized him for not carrying out the illegal and unreasonable orders, actuated by mala fide motive. The action of management in dismissing workman concerned was illegal, unjustified and mala fide. Therefore, the workman concerned claimed his reinstatement with full back wages alongwith other benefits incidental to his service.

3. The management of the Bank filed its written statement stating interalia that on 4th August, 2004 at about 9.40 A.M. the workman along with Mr. Mumtaz Ahmed Ashiq Ali assaulted Branch Manager of Kolkata Branch Mr. Amir Azam Khan on his head, face and hand with their fists and kicks causing injuries to his body in presence of staff members and customers of the Branch within the premises of the Branch during working hours and threatened him with dire consequences. The Branch Manager also lodged complaint with Beniapukur Police Station, Kolkata against the workman, Shri Fida Mehdi Masoodul Hasan Syed and Shri Mumtaz Ahmed Ashiq Ali under Section 341 and 323 and 14 of Indian Penal Code. On domestic enquiry the workman concerned was held guilty of committing misconduct and therefore, he was dismissed from service of the Bank as the charges against him were grave.

4. After reference of industrial dispute to this Tribunal the workman challenged the validity and fairness of the enquiry and therefore, it was decided as a preliminary issue. The enquiry was found to be valid and in furtherance of natural justice *vide* order dated 11th May, 2005 passed by this Tribunal. Now the question arises as to whether findings of enquiry can be interfered with by this Tribunal and if yes what is extent of interference?

5. The scope and ambit of interference by the Tribunal with the domestic enquiry has always been a matter of controversy. However, in order to appreciate this question it is necessary to enter the past history of introduction of Section 11A in the Industrial Disputes Act, 1947 (hereinafter called as Act of 1947 for the sake of convenience). Initially the extent of interference by the Industrial Tribunal with the domestic enquiry was very limited and the domestic enquiry was held to be prerogative of the management. But with the judgment of Hon’ble the Apex Court in **Indian Iron & Steel Co. Ltd. v. Their workmen**, 1958-I-LLJ 260 the scope of interference by the Industrial Tribunal was gradually enlarged to the extent of victimization, unfair labour practice, action of the employer being *mala fide* and finding of the enquiry being perverse. This position of interference by the Industrial Tribunal changed with the introduction of Section 11A in the Act of 1947 where the Tribunal was given wide power to interfere with the findings of the domestic enquiry. This power of Industrial Tribunal under Section 11A was interpreted by Hon’ble the Apex Court in **Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The management**, 1973-I-LLJ 278 where it was held that the Tribunal can reappraise the evidence in the domestic enquiry in order to satisfy itself that the misconduct alleged against the

workman is established. Thus, where enquiry has been held to be valid, Tribunal can interfere with the findings of domestic enquiry in above manner.

6. Again a question arises involving controversy of scope of reappraisal, whether the Tribunal can reappraise the evidence led before the Enquiry Officer and enter into factual aspect of the case. But, in catena of cases it has been laid down that the reappraisal cannot be that of either of original or that of appellate court, but of revisional court. In **Calcutta Jute Manufacturing Company v. State of West Bengal**, 2002-I-LLJ 224 (Calcutta High Court) it has been held that –

“6. But that reappraisal cannot be that of either the original or of an appellate court, but of a revisional court. Or, in other words, it is clothed with the additional power of reappraisal of evidence with a revisional court’s outlook. The satisfaction of a court scrutinizing that an employer to justify the action. On such reappraisal it has to satisfy itself that on such evidence the action could be justified. There remains a thin distinction in the exercise of such jurisdiction. In the name reappraisal it cannot weigh the evidence in the same manner as an original or appellate court when the enquiry is found to have been held validly.”

7. Thus, it is clear that though the Industrial Tribunal has got power to reappraise the evidence available on record of domestic enquiry, but at the same time the Tribunal has also to bear in mind the thin distinction between an original/appellate decision and revisional decision, while examining for satisfaction about the justification of the action taken by the employer/disciplinary authority.

8. Scrutinizing the present case with above angle, allegations of misconduct against the workman concerned were found to have been proved by the evidence adduced during enquiry. It was alleged that he shouted at Branch Manager, Mr. Amir Azam Khan and when interfered he assaulted the Branch Manager with kicks and fists causing injuries to the Branch Manager in presence of staff members. In order to prove this fact the management had examined before the Enquiry Officer Mr. Shakil Ahmed and Amir Azam Khan as witnesses who were cross-examined by the workman concerned. The evidence of these two witnesses were sufficient to substantiate the case against the workman concerned. The witnesses examined on behalf of the workman could not deny the incident on the date and time as alleged, though different reasons had been assigned by them for happening of such incident. They also could not deny the involvement of the workman concerned in the incident. In these circumstances, it cannot be said that the findings of the Enquiry Officer were based on no evidence and the action of the management was not justified and that it suffers with perversity.

9. Even if findings given in domestic enquiry does not suffer with any illegality or perversity, the Tribunal has still jurisdiction to interfere and it is open to the Tribunal to substitute one punishment by another, though it exercises limited jurisdiction in this behalf. In catena of cases the Hon’ble Apex Court has laid down that such interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of punishment.

10. In **Muriadih Colliery v. Bihar Colliery Kamgar Union**, 2005 (3) SCC 331 the law has been laid down by the Hon’ble Supreme Court as follows –

“It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic enquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment, it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment.”

11. In **Life Insurance Corporation of India v. R. Dandapani**, 2006(108) FLR 953 it has been observed by the Hon’ble Apex Court that the Tribunal has power to reduce the quantum of punishment, but power under Section 11-A has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned.

12. In **Management of Bharat Heavy Electricals v. M. Mani & Others**, 2018 LLR 2(SC) Hon’ble the Apex Court has held that where a departmental enquiry is held to be legal and proper then the only question remains for consideration is whether the punishment of dismissal is required any interference. Relevant portion of the judgment may be quoted as below:

“18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Disputes Act, 1947.”

13. The jurisdiction to interfere with the quantum of punishment could be exercised only when it is found to be grossly disproportionate. Indiscipline at workplace has been regarded of prime concern and assaulting a superior at workplace has been held to be an act of gross indiscipline. Punishment of dismissal from service, therefore, cannot be said to be disproportionate so as to shock one’s conscience. In **Muriadih Colliery case** (supra) two workmen alongwith others armed with deadly weapon went to the office of the General Manager and assaulted him causing injuries to him

and his colleagues. The fact that the victim did not die was held to be not a mitigating factor to reduce the sentence of dismissal.

14. Similarly, in **M.P. Electricity Board v. Jagadish Chandra Sharma**, (2005) 3 SCC 401 the employee was found guilty hitting and injuring his superior at workplace in presence of other employees. The Hon'ble Supreme Court held that this clearly amounted to breach of discipline of the organization. Relevant portion of the judgment is as follows:

“Discipline at the workplace in an organization like the employer herein, is the sin qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved.”

Hon'ble Court has further quoted Jack Chan to highlight the importance of discipline at work place.

“discipline is a form of civilly responsible behavior to help to maintain social order and contribute, preservation, if not advancement of collective interest of the society at large.”

15. Now reverting back to the facts of the instant case which are proved at enquiry, the workman was under employment of Bombay Mercantile Cooperative Bank Ltd. where on 4th August, 2004 he shouted at the Branch Manager saying “Tum apna kam karo, kyon chillate ho.” When the Branch Manager told him not to interfere the workman assaulted the Branch Manager, Mr. Amir Azam Khan by slapping him on his face in presence of several staff members who were present there and tried to stop the workmen from assaulting the Branch Manager. It has also come in evidence during enquiry that the workman got himself in between legs of the Branch Manager. He also threatened the Branch Manager by saying “Hum apko dekh lenge, meri naukri gayee to parvah nehin.” Thus it is clear that the workman created an atmosphere of indiscipline and disturbed the smooth and peaceful functioning of the Bank. In an organization where head of the organization himself was subjected to abusive language and physical assault by a driver of the organization, the workman does not deserves to be in employment and his presence in the organization is detrimental to the interest of the Bank. The aforesaid act of the workman has been held to constitute misconduct. From the record of enquiry it is also established that the past conduct of the workman was also not good. In the year 2001 a memo was given to him for his misbehavior and giving threats to bit officer of the Bank. He was cautioned to change his behavior. However, it appears that he was not amenable to caution given to him. In these circumstances, the punishment imposed by the employer cannot be said to be shockingly disproportionate to the misconduct in the absence of which no interference by this Tribunal is warranted under Section 11A of the Act of 1947.

16. In view of above, the action of the management of Bombay Mercantile Cooperative Bank Ltd. in imposing the punishment of dismissal from service of the Bank on Shri Fida Mehdi Masoodul Hasan Syed, Driver is legal and justified. Workman concerned is not entitled to any relief.

Award is passed accordingly.

Dated, Kolkata,

The 8th October, 2018.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 45/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 23.10.2018.

[No. L-12025/01/2018- IR(B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 45/2012****BETWEEN :**

Sri Bhakt Raj, S/o Sri Mahadev
249, Madhwapur Baihrana
Distt. Allahabad – 211001

AND

1. General Manager
Northern Railway, Baroda House
New Delhi- 110001.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow 226001
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP) 224001

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal –cum- Labour Court, Lucknow.
2. The case of the workman, Bhakt Raj, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. September, 2003 to 25.04.2009 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.
3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.
4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.
5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.
6. The opposite party No. 03 did not turn up after filing of its written statement.
7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. September, 2003 to 25.04.2009 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorized representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon

- (i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998*
- (ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*
- (iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*
- (iv) *(2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

- (i) *2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*
- (II) *2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/Identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of railways entered into an agreement with M/s Shahid Faizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period of two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor w.e.f. 01.09.2003. He admitted that the railway neither appointed nor terminated his services; rather he stated that the Contractor, Shahid Faizan terminated him. He also admitted that the annexure No.01 to the affidavit is his Identity Card, issued by the contractor.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

“The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of “employer” as defined in the Industrial Disputes Act nor such workman can be held to be a “workman” under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL.”

Hon'ble Allahabad High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

“Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)”

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. September, 2003 to 25.04.2009, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked

for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. September, 2003 to 25.04.2009, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he was and an employee of the contractor viz. M/s Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

LUCKNOW.

05th October, 2018.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 43/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10. 2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018—आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 23.10.2018.

[No. L-12025/01/2018– IR(B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 43/2012

BETWEEN :

Sri Pradeep Kumar, S/o Sri Bhulai Ram
Nagar Panchayat Koiripur
Post-Koiripur, Mo-Hanuman Nagar
Distt. Sultanpur – 228001.

AND

1. General Manager
Northern Railway, Baroda House
New Delhi.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow.
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP)

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal –cum- Labour Court, Lucknow.
2. The case of the workman, Pradeep Kumar, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.09.2003 to 25.04.2009 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.
3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.
4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the

same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.09.2003 to 25.04.2009 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorized representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon

- (i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998.*
- (ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*
- (iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*
- (iv) *(2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

- (i) *2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*
- (ii) *2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/Identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of railways entered into an agreement with M/s Shahid FAizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that

there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s. Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period or two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor on the orders of the railway officer; but he could not show any such order of the railway officer. He admitted that the railway neither appointed nor terminated his services; rather he stated that the Contractor, Shahid Faizan terminated him. He also admitted that he had not filed any such document which goes to show that he continuously worked from 2003 to 2009 with the railways.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

"The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of "employer" as defined in the Industrial Disputes Act nor such workman can be held to be a "workman" under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL."

Hon'ble Allahabad High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

"Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)"

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the

opposite party No. 02 and had worked continuously w.e.f. 01.09.2003 to 25.04.2009, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. 01.09.2003 to 25.04.2009, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he was and an employee of the contractor viz. M/s. Shahid Faizan Ahmed & Brother's, therefore, the workman could not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

LUCKNOW.

04th October, 2018.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2018

का.आ. 1575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 44/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 23rd October, 2018

S.O. 1575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 23.10.2018.

[No. L-12025/01/2018-IR(B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 44/2012****BETWEEN :**

Sri Pankaj Kumar, S/o Sri Pradip Kumar
249, Madhwapur Baihrana
Distt. Allahabad – 211001

AND

1. General Manager
Northern Railway, Baroda House
New Delhi- 110001.
2. Divisional Rail Manager
Northern Railway, Hazratganj
Lucknow 226001
3. M/s. Shahid Faizan Ahmad & Brothers
654, Begum Ka Makbara, Faizabad (UP) 224001

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal –cum- Labour Court, Lucknow.

2. The case of the workman, Pankaj Kumar, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. January, 2007 to 25.04.2009 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.

3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation

of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. January, 2007 to 25.04.2009 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorizes representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon

(i) *The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998*

(ii) *Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.*

(iii) *(2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.*

(iv) *(2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.*

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

(i) *2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL*

(II) *2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati*

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is violative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/Identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of

railways entered into an agreement with M/s Shahid Faizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period of two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor w.e.f. 01.01.2007. He admitted that the railway neither appointed nor terminated his services; rather he stated that the Contractor, Shahid Faizan terminated him and the contractor was allotted contract by the Railways for executing the work. He also admitted that the paper No. 12/3, filed by him is photocopy of the Identity Card, issued by the contractor.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Supreme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in 2017 LLR 940, *the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

"The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of "employer" as defined in the Industrial Disputes Act nor such workman can be held to be a "workman" under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL."

Hon'ble Allahabd High Court in 2018 LLR 758 *Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

"Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute

erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)”

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. January, 2007 to 25.04.2009, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In (2002) 3 SCC 25 *Range Forest Officer vs S.T. Hadimani* Hon’ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

18. Analyzing its earlier decisions on the aforesaid point Hon’ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. January, 2007 to 25.04.2009, but has not produced any document neither original nor photocopy in support of his pleadings. The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s Shahid Faizan Ahmed & Brother’s. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother’s for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he

was and an employee of the contractor viz. M/s. Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

RAKESH KUMAR, Presiding Officer

LUCKNOW.

04th October, 2018.

नई दिल्ली, 24 अक्टूबर, 2018

का.आ. 1576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय (1) औरंगाबाद के पंचाट (संदर्भ संख्या 52/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल-12012/163/2008-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th October, 2018

S.O. 1576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2009) of Labour Court (1) Aurangabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 24.10.2018.

[No. L-12012/163/2008- IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

Exhibit No. O- II

IN THE LABOUR COURT AT AURANGABAD

REFERENCE (IDA) No. 52/2009

Between :

The General Manager (P) State Bank of India
Mumbai Local Head Office, Bandra- Kurla Complex,
Mumbai.

...First Party

AND

Shri Sampat S/o. Tabaji Surwase, Aai Niwas, Dattanagar,
Nevgaon College Road, Beed,
Tal & Dist. Beed.

...Second Party

CORAM: D.B.PATANGE, JUDGE

Advocates:

Mr. R.T. Biradar, learned Counsel for the 2nd Party/Workman

Mr. P.P. Paithankar, learned Counsel for the 1st Party/Employer

Dtd. 22.03.2013

AWARD

This reference has been made over by the Deputy Commissioner of labour, Aurangabad u/s. 10 of sub – Section (1) Section and 12 sub-section 5 of Industrial Disputes Act, 1947, for adjudication of dispute between the above mentioned parties.

2. The brief facts of the statement of claim may be stated as under:

The second party/workman has challenged the order of removal from service dtd. 24/04/2002 in this Reference. It is contended that the first party/employer being appointing and punishing authority of the second party/workman is answerable to the present Reference. The second party/workman was appointed as a Messenger by the first party/employer on 01/05/1980 and subsequent thereto, he was promoted as a Clerk on 01/08/1988. Later on, he was allotted work as an acting Assistant Manager (Cash) and there were no complaints against him from the side of customers, except present one. On 05/11/1999, the first party/employer had issued charge sheet to the second party/workman levelling following charges.

- (i) While working as Assistant Manager (Cash) (Officiating) at Tirthpuri Branch, on 27.01.1999, he misappropriated an amount of Rs. 34,000/- tendered to him by Shri. Chakradhar Gulabrao Muley for credit of his S.B.Account No. 27/4408. He made fraudulent entries of this transaction in the S.B. Pass book of Shri Muley as on 27.01.99, under his authentication. However, no cash receipt was recorded in Bank's cash receipt scroll and thus misappropriated the amount.
- (ii) On 20.02.1999 he misappropriated an amount of Rs. 10,000/-tendered by Shri. Kisan Ganpat Khoje, for credit of his Savings Bank Account No. 25/4154. He made fraudulent entries of this transactions in the relative S.B.Pass book as on 20.02.1999. He also made entry in the ledger account as on 01.03.1999. However, no cash receipt was recorded in cash receipt scroll, and thus misappropriated the amount.
- (iii) It is also observed that in following accounts receipts have been recorded in the cash receipt scroll on 27.01.99, while the credits were not offered in the respective S.B. accounts on these dates. Further in all these ledger accounts he have made fraudulent entries under his authentication on various dates but there were no corresponding cash receipts recorded in the cash receipt scroll as on dates.

Sr No.	Name	A/c No.	Date of receipt as per cash receipt scroll	Date as per ledger accounts	Amount
1	Laxman Daulatrao Pandhare	37/5679	21.01.99	29.12.98	9,000/-
2	Rustom Laxmanrao Khoje	24/3978	27.01.99	No dates	14,000/-
3	Satish Ganpatrao Parkikar	13/2208	27.01.99	9.1.99	5000/-
	Total				28,000/-

Thus, although, he received the amounts for credit of Saving Bank Account of depositors as detailed above on various dates, he made fraudulent entries of the transactions in the respective partyledger accounts as well as in the pass book but he did not enter the receipt in the cash receipts scroll. Afterwards out of Rs. 34,000/- misappropriated by him as detailed in charge no.1, he tendered the amount aggregating Rs. 28,000/- for credit of these 3 S.B. Accounts on 27.01.99 and entered at the last of cash receipt scroll.

- (iv) The episode of misappropriation of Rs. 34,000/- of Shri. C.G.Muley and of Rs. 10,000/-of Shri. K.G.Khoje appeared in the local news paper which caused loss of image to the Bank.

3. The second party/workman had received the charge sheet on 08/12/1999 and replied the same and explained true and real facts by reply dtd. 01/01/2000. Subsequent thereto, enquiry was conducted on various dates, but in the enquiry copies of documents were not supplied. Despite directions of enquiry officer, the first party/employer failed to supply the documents to second party/workman. The first party/employer failed to examine documents through hand writing expert, which were alleged to be written by second party/workman. The first party/employer failed to prove allegations of misconducts against second party/workman by adducing oral evidence. During the pendency of enquiry, criminal case was filed against second party/workman at the instance of first party/employer. It is also alleged that the enquiry officer has not followed rules of enquiry and principles of natural justice while conducting the enquiry. By virtue of enquiry report dtd. 16/08/2011 a perverse finding came to be recored against the second party/workman. Subsequent thereto, the second party/workman was called upon to show cause notice dtd. 15/12/2001 and to explain about proposed punishment. Disciplinary authority held personal hearing on 20-02-2002, but of no use to the second party/workman.

4. Subsequent thereto, the second party/workman preferred First Appeal on _05/07/2002 against the punishment dtd, 24/04/2002, but his submission was not considered and said authority confirmed the punishment. The Second Party/workman made request to modify the punishment from removal from service to compulsory retirement for getting pensionary benefits, but same was also denied. Subsequent thereto, he raised industrial dispute under section 2-A of the I.D.Act, before Regional Labour Commissioner (Central) Pune on 19/04/2007, but Conciliation failed owing to non response by first party/employer. As such, the second party/workman submitted that the enquiry conducted contrary to the principles of natural justice and therefore, findings recorded by enquiry officer is perverse. Hence, second party/workman prayed for quashing and setting aside the removal from service order dtd. 24/04/2002 along with reinstatement, continuity of service and full back wages.

5. The first party/employer filed its written statement vide Ex C-4 and thereby disputed the contentions made in the Statement of Claim being false and incorrect. According to first party/employer, this Reference has preferred after a long efflux of more than 5 years time without any explanation about unjustified delay. It is contended that the second party/workman was not vigilant about his rights on account of fraud committed by him and there is loss of confidence in him by the Bank. Therefore, his removal from service is justified. Even, the second party/workman has suppressed certain material facts from this Court and he wishes to paint a clean picture about his conduct in the Bank. But, in fact, his conduct was highly undisciplined, dubious, unlawful and supercilious at various branches, where he has worked.

6. It is contended that the second party/workman had committed fraud on 30/10/1996 at Shirur Patoda Branch of the Bank. After making complaint by Depositor, he deposited the same. Similarly, at Shirur Patoda Branch, he accepted cash amount amounting to Rs. 25,000/- and Rs. 11,000/- from two customers viz. Shri. B.B.Khole and Shri. S.H.Bankar for credit in their Bank Account, but he did not scroll said amount in receipt scroll.. However, upon disclosing said fact, he had deposited amount of Rs. 36,000/- in both accounts. Subsequent thereto, upon accepting the charges, the Disciplinary Authority ordered a punishment of bringing down his scale by 2 stages and treating the suspension period as it is against the second party/workman, in pursuant to above misconducts.

7. It is also contended that similar misconducts and fraudulent activities have been committed by the second party/workman at Tirthpuri Branch, as depicted in charge sheet. Disciplinary Authority found the explanation tendered by second party/workman as unsatisfactory and decided to hold departmental enquiry to look into the charges levelled against second party/workman. In the said enquiry, the second party/workman was duly represented by Union Representative Shri. S.M. Shinde and Enquiry was conducted on various dates and an opportunity to defend allegations were given to second party/workman. Thus, upon evidence against the second party/workman, the charges in the enquiry were proved and therefore, he was slapped with second show cause notice calling upon his explanation about proposed punishment. Accordingly, punishment of "be removal from service" under para 521 (5) (b) of the Sastry Award has been inflicted against the second party/workman. The second party/workman availed the Appeal, but of no consequence.

8. It is also contended that, in the event, this Court comes to the conclusion that enquiry is vitiated on any of the ground or that the findings of the enquiry officer are not proper, then the first party/employer be permitted to lead evidence to prove the charges before the Court. The Bank deals with public money and therefore, it is answerable to its customers and general public. It is not question whether loss is caused to the Bank or not. It is the question of trust, since, the Bank has dealing with the public moneys and are answerable to the public. Due to habitual behaviour of the second party/workman, the Bank had lost confidence, hence, he is removed from him service. As such, the first party/employer prayed for rejection of the Reference.

9. In view of respective pleadings, following issues were framed, I have recorded my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
1.	Whether the enquiry conducted by first party is fair and proper as per law?	In the negative
2.	Whether the findings recorded by the inquiry officer is perverse ?	In the affirmative
2A..	Whether first party/employer proves charges of misconducts before the Court ?	In the affirmative
3.	Whether the second party workman proves that his removal from service dtd. 24/04/2002 is illegal, improper & void ?	In the negative
4.	Whether the second party workman is entitled for reinstatement with continuity of service & back wages w.e.f. 24.04.2002 ?	As per final award
5.	What Award ?	As per final award

Reasons

10. It may be recalled that in pursuant of an order on preliminary points, this Court came to the conclusion that enquiry conducted by first party/employer against the second party/workman was not fair and proper and findings recorded by Enquiry Officer was perverse. In the said order dtd. 16/06/2010, it is also observed that the first party/employer is entitled under law to lead the evidence to prove the charges against second party/workman before the Court.

11. It may be recalled that the right to prove the charges before the Court in respect of alleged misconducts has been reserved by the first party/employer in its written statement, therefore, permission was accordingly afforded to the first party/employer to lead evidence about the same.

Issues No. 2-A

12. In this context, the first party/employer adduced the evidence of its employees viz. Mr. Hemant Purushottam Deshpande at Ex.C-27 and Mr. Ravi Joshi at Ex.C-28. Accordingly, the first party/employer closed its evidence by filing Pursis at Ex.C-29. Moreover, first party/employer also relied on numerous documents filed with list Ex.C-11 comprising of Memorandum, Charge Sheet issued by First Party, Reply given by Second Party Saving Bank Pass books, Ledger Sheet, Cashier receipt scroll, Enquiry Report, Second Show cause notice, final order, appeal filed by second party. Enquiry proceedings. The first party/employer also relied on documents with list Ex.C-24 comprising of certified copy of letter of confession, Ex.71 in RCC 180/2000 before the JMFC, Ambad, Certified copies of vouchers and depositions.

13. Whereas, the second party/workman lead his evidence vide Ex. U-1.5 and thereby closed the same by filing pursis Ex.U-18. Moreover, the second party/workman has relied on copy of Judgment and Order passed by J.M.F.C. dtd. 16/11/2011 vide Ex.U-17 and other documents with list Ex.U-2 & U-5 comprising of copy of charge sheet, appointment of enquiry officer, copy of second show cause notice, copy of reply of second party/workman, copy of final order, copy of Appeal and Order of Appeal, xerox copy of evidence of Mr. Mule and Mr. Khoje, xerox copy of enquiry report etc.

14. The first party/employer adduced the evidence of its two employees viz. Mr. Hemant Purushottam Deshpande at Ex.C-27 and Mr. Ravindra Vishnupant Joshi at Ex.C-28 in accordance with averments made in the Written Statement and documents placed on record. Moreover, the first party/employer also relied on enquiry report and proceeding filed with list Ex.C-11 and Ex.C-24. Much emphasis has been placed in the evidence of Mr. Hemant Deshpande that he was Branch Manager at Tirthpuri from May 1988 to July 1999, in which the alleged incident involving the second party/workman has been arisen, about misappropriation. His evidence would revolve around that the second party/workman was by his own admission removed from service and he raised the said issue after long efflux of five years time. According to him, the second party/workman had misappropriated an amount of Rs. 34,000/- when he was working as a Assistant Manager (cash) on officiating on 27/01/1999 from costumer viz. C.G.Mule for credit to his Saving Bank Account no. 27/4408. According to him, second party/workman made fictitious credit entry in the Pass Book of customer, but same was not authenticated. He also made fictitious credit entry under his initial, but did not make such entry in the cash receipt scroll. According to him, similar misappropriation of Rs. 10,000/- has been committed by the second party/workman on 20/02/1999 in respect of customer Mr. Kisan G. Khoje, He also submitted that similar type of misconduct has been committed by second party/workman in the account of customers viz. L.D. Pandhare, Shri. R.L.Khoje and S.G.Paralikar for an aggregate amount of Rs. 28000/-. The evidence of Hemant Deshpande is not specifically dissuaded during the course of cross examination. He also admits that the duties of cashier is to receive and pay cash, so also issue receipt and to make an entry in passbook i.e. saving account. Whereas, he also stated that generally, acting Head Cashier used to supervise the work of entire cashier and second party/workman was entrusted with the same. He also stated in the cross examination that the Bank had recovered deficit amount from the second party/workman.

15. The first party/employer adduced evidence of Mr. Ravindra Vishnupant Joshi, who was working as a Cash Officer at Tirthpuri Branch on 19/03/1999 to 23/06/2001. According to him, while balancing the Saving Account Ledgers of the Branch, it was revealed that the second party/workman while working at Tirthpuri Branch as an Assistant Manager (Cash) on officiating on 27/01/1999 misappropriated an amount of Rs. 34000/- received by him from customer Shri. Muley for credit the same to his Bank Account no. 4408 on 27/01/1999. According to him, second party/workman also committed misappropriation of an amount of Rs. 10,000/- received from the customers Shri. Kisan G. Khoje for crediting to his saving bank account no. 4154. His evidence would also reveal that upon making enquiry on 03/04/1999, the second party/workman accepted having misappropriated - the amount and voluntarily wrote a letter confessing the fraud committed by him, in his presence and submitted the same to the Branch Manager and same confession letter is at Ex.C-11/14. He, however denied in the cross examination that coercion was applied for getting confession letter.

16. Whereas, the second party/workman viz. Sampat Surwase led his evidence in accordance with the averments made in the statement of claim. His evidence would revolve around the fact that he has not misappropriated any amount as alleged by the first party/employer in the charge sheet. According, to him, ledger clerk and cashier were friends of then manager and therefore, they threatened him to dismiss from service by filing criminal case and forcibly obtained the letter dtd. 03/04/1999 and cash deposited on 05/04/1999 from him. According to him, there is no base to the allegations made against him in the charge sheet, so also the first party/employer failed to prove the charges against him.

17. In his cross examination he fairly concedes that no important aspect has been remained to be pleaded in his Statement of Claim. He also admits that there is no pleadings that letter of confession dtd. 03/04/1999 was forcibly obtained.

18. The learned Counsel for first party/employer Mr. Paithankar submits that the letter of admission dtd. 03/04/1999 being executed by the second party/workman is best evidence to prove the charges against second party/workman. He also submits that when departmental enquiry has been set aside by the Labour Court, the first party/employer can rely upon enquiry proceedings in the first place and similarly adduced additional evidence before the Labour Court to justify its action, by relying on decision of Hon'ble Apex Court reported in AIR 1972 SC page 1031 in case of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh..

19. The learned Counsel for the first party/employer also submits that present Reference is filed after lapse of 5 years from the date of cause of action, therefore, it amounting to stale and non existence claim. As such, he submits that such claim should not be entertained by the Court, even though, dispute is referred to it U/s. 10 of the I.D.Act.

20. In support of his submissions, he has relied on following decisions of Hon'ble Apex Court.

- (I) Nedungadi Bank Ltd., Vs. K.P. Madhavankutty and others reported in AIR 2000 SC 839.
- (II) Union of India and Ors V. A. Durairaj (D) reported in AIR 2011 SC 1084.

21. Whereas, the learned Counsel for second party/workman Mr. R.T.Biradar submits that if the first party/employer states that second party/workman has made stale claim then it must challenge the Reference by way of Writ Petition on the ground of delay and deny existence of industrial disputes. He also submits that in the present case such recourse is not followed and therefore, delay caused in filing Reference cannot be regarded as non existence of industrial disputes, since sufficient time has been elapsed in prosecuting the Appeals and making representations to various authorities by the second party/workman. In this respect, Mr. Biradar has relied on decision reported in 2007 (7) SC 629 in case of Karan Singh Vs. M/s. Executive Engineer Haryana State Marketing Board.

22. In this reference, there appears to be delay of almost 5 years in preferring reference to the conciliation authority. While considering the question of delay, the Court will have to be guided by certain principles, which are emerging from various judgments of the Apex Court, as under :

- “(i) There is a need to raise an industrial dispute within a reasonable period and the onus of showing, that the dispute was raised w itl in a reasonable time is upon the employee.
- (ii) It is for the employee to explain, the delay by furnishing acceptable explanation to the satisfaction of the Court or that he was not responsible for the delay caused.
- (iii) The fact that the workman was making repeated representations, is not sufficient to explain the delay.
- (iv) Delayed reference causes prejudice to both the employer and the employee. Lapse of time results in losing the remedy and the right as well.
- (v) Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded by denying full or partial back wages, is a matter of discretion, which should be judicially exercised depending upon the facts and circumstances of the case and no fixed formula can be laid down.
- (vi) The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable.
- (vii) The person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the work. It would be difficult to obtain witnesses, who would be competent to give evidence so many years later if the Labour Court wishes to hold an enquiry into the matter”.

23. Thus, considering aforementioned discussion and fact that if first party/employer states that second party/workman has made stale claim then it could have challenged the Reference by way of Writ Petition on the ground of delay and deny existence of industrial disputes. In the present case such recourse is not followed and therefore, delay factor by itself, cannot be regarded as non existence of industrial dispute, since sufficient time has been elapsed in prosecuting the Appeals and making representations to various authorities by the second party/workman, as urged on behalf of second party/ workman.

24. It may be recalled that first party/employer has based its accusation on the basis of letter of admission executed by second party/workman dtd. 03/04/1999. It may be recalled that second party/workman though, submitted that coercion was employed, while obtaining such letter, however, there appears to be no foundation in the pleadings about said defence. Moreover, second party/workman nowhere raised said defence in the enquiry and subsequent thereto in the Appeals, so also in the Statement of Claim that said admission letter was forcibly obtained by the Bank Therefore, it can be said that second party/workman has been estopped from claiming otherwise about the said letter of admission, without there any backing of pleadings to that effect, since, mere denial will not wipe out the truth.

25. It is seen from the record that there is no real dispute that letter of admission Ex.C-11/14 was executed by second party/workman in favour of the Bank, but as discussed herein-above subsequent stand taken by the second party/workman that said letter was obtained under coercion by the Bank under the guise of not taking any action against him. Whereas, said subsequent defence cannot be entertained in view of lack of pleadings on the part of second party/workman. Said letter of admission Ex.C-11/14 has been executed by the second party/workman and thereby, he admitted about his misconducts of misappropriation. Moreover, witness of first party/employer Mr. Ravindra Johi also proved said letter of admissions, who is also a signatory of said document, as a witness. Thus, it can be said that second party/workman accepted having misappropriated the amount and voluntarily wrote a letter confessing the fraud committed by him in presence of witness of Bank Mr. Ravindra Johi. Even otherwise, other documents placed on record with list Ex.C-11 comprising of ledger sheet of account no. 27/448, 23/4154 along with cash receipts scroll, Saving Bank pass book of Shri Kisan Khoje, Shri. C.G. Mule would also supported the modes operandi of fraud committed by second party/workman, when he was officiating on 27/01/1999, since, all these original documents have been proved on behalf of the Bank by examining witnesses Mr. Ravindra Joshi and 1-lemant Deshpande.

26. The contention of second party/workman that other employees of the Bank has framed him in order to dismiss him from service cannot be said to be proved on behalf of second party/workman for adducing specific evidence to that effect. Even otherwise, his stand that he was not responsible for said misconduct of misappropriation, being cashier and other clerks are responsible for preparation of record is also not proved on behalf of second party/workman, since, second party/workman admitted his signatures and initials upon cash receipts scroll Ex.C-11/6, another cash receipt scroll Ex.C-11/09 and it vindicated stand of the Bank about modes operandi being employed by the second party/workman for committing misappropriation. Though, he was officiating as manager (cash) at the relevant time but his conduct of unauthorized additions on ledger, passbooks and other relevant documents would involve him as author of said documents. Since he admits his initials and signatures of concern documents. Thus, there is ample evidence on record which suggests that second party/workman has committed misappropriation as alleged by the Bank in charge sheet by bringing documentary evidence to that effect, so also by adducing oral evidence of its key witnesses Mr. Hemant Deshpande & Mr. Ravindra Joshi and more particularly by virtue of letter of admission executed by the second party/workman admitting said misappropriation. Nothing has been brought on record by the second party/workman in order to rebut the evidence of misappropriation against him. Thus, relying, upon aforementioned discussion, it can be said that first party/employer has succeeded to prove the charges of misconducts of misappropriation as alleged against second party/workman. Accordingly, I have answered issue no. 2-A.

Issues No. 3&4

27. Since, these issues are interlinked they can be discussed together. As discussed herein-above, considering the aforementioned findings on issues, it is evident that first party/employer has succeeded to prove the charges of misconducts against second party/workman before the Court, which has been based upon charge sheet dtd. 08/12/1999. Therefore, now it has been seen that whether punishment inflicted upon second party/workman is proper and proportionate considering the gravity of misconduct or shockingly disproportionate. In this context, the evidence of second party/workman needs to be considered for arriving at justifiable conclusion.

28. The second party/workman submits in his evidence that he has made request to the first party/employer to amend the punishment from removal from service to compulsory retirement for getting pensionary benefits, but said request was rejected. His evidence would also reveal that subsequent to 25/04/2002 he has been tried to get job in Financial Institution and other Institutions, but could not get the same till today. As such, he is maintaining his family by taking hand loan from friends and relatives, so also salary of his wife. In his cross examination, he also stated that he has made request to the bank authorities in Appeal, so also in his Affidavit to view sympathetically while awarding the punishment, though, he has not admitted the guilt.

29. In this context, the learned Counsel for second party/workman Mr. R.T.Biradar submits that punishment imposed about removal from service to the second party/workman is shockingly disproportionate considering the gravity of charges against him. Mr. R.T. Biradar also submits that there is actually no loss to the Bank in pursuant to alleged misconduct of the second party/workman therefore, lesser punishment could have been awarded.

30. In support of his submissions, he relied on (2000) 10 Supreme Court Cases 280 in case of Assn. General Manager, SBI Vs. Thomas Jose and another. Wherein para no. 3 & 4 it is observed thus:

"3. In the aforesaid case, in more or less similar circumstances, this Court declined to interfere with the view taken by the Labour Court that an errant workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of Scooters India Ltd. There is, in our view, a vital difference between an undertaking such as Scooters India Ltd. And the bank. A bank deals with public moneys. Misappropriation by an employee of a bank is misappropriation of public moneys and must be treated very differently. Misconduct such as this cannot be treated as lightly as it has been done. We think that the appropriate order should at least have been of reinstatement without back wages plus a direction that the first respondent would not be entitled to any increments for a substantial period with all the cumulative consequences of such an order. That is the order that we propose to pass.

4. The appeal is allowed. The order under appeal is modified so that the first respondent is reinstated in the appellant Bank's service but without back wages and without any increments for a period of ten years, with all cumulative consequences. The period of ten years shall run from today."

31. As against this, the learned Counsel for first party/employer Mr. Paithankar submits that when charges of misconducts are proved the scope of interference in quantum of punishment is very limited and restricted to exceptional cases. He has also submitted that when punishment is shockingly disproportionate to the charges proved then only powers under section 11-A of the I.D.Act could be utilized. Mr. Paithankar also submits that track record of the second party/workman is vulnerable, since, he has been already punished for similar misconducts on behalf first party/employer bank, but no improvement has been noticed, therefore, the punishment imposed against second party/workman is proper and in accordance with the provisions contained in Sastri Award.

32. In support of his submission, Mr. Paithankar, learned Counsel for first party/employer has relied upon following decisions :—

- (i) AIR 2008 SC 3060 in case of North West Karnataka Road Transport Corpn. V. H.H.Pujar.
- (ii) AIR 2008 SC 99 in case of U.B.Gadhe and Ors etc.etc. Vs. G.M. Gujrat Ambuja Cement Pvt Ltd.
- (iii) AIR 2003 SC 1462 (1) in case of Regional Manager, U.P.S.R.T.C. Etawah and other Vs. Hoti Lai and another.
- (iv) AIR 1997 SC 2661 in case of Punjab Dairy Development Corporation Limited and another Vs. Kala Singh.
- (v) AIR 2005 SC 3272 in case of State Bank of India and another Vs. Bela Bagchi and others.

In above decision at serial no. 5, in para no. 14 to 16 it is observed thus:

"14 Respondents 1 and 2 have highlighted the alleged withdrawal of grievances of the account-holder and the absence of any loss to the bank.

15. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authoritycum-Regional Manager v. Nikunja Bihari Patnaik, [1996] 9 SCC 68, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.

16. Judged from any angle, the judgment of the learned Single Judge and the Division Bench which are impugned cannot be maintained and are set aside. The appeal is allowed without any order as to costs."

33. I have gone through the decisions cited supra on behalf of both side. In the decision cited supra on behalf of second party/workman the Hon'ble Apex Court has opined that Bank deals with public moneys, misappropriation by an employee of a Bank is misappropriation of public moneys and must be treated very differently. It is seen that in the present case, the second party/workman was previously punished on the basis of repetitive misconduct by second party/workman of similar nature. It is seen that the Disciplinary Authority ordered a punishment of bringing down his scale by 2 stages and treating the suspension period as it is against the second party/workman, in pursuant to proved misconducts, earlier.

34. Therefore, in view of decisions rendered by Hon'ble Apex Court cited on behalf of first party/employer, it cannot be said that the punishment imposed against second party/workman is shockingly disproportionate, considering gravity of charges proved against him, since, he was already given opportunity in pursuant to earlier punishment to reform, but he failed to make good of that reformatory opportunity and accordingly landed himself in trouble by committing similar repetitive misconducts. Even otherwise, for the said of misconduct, Supervisory Staff Service Rules and Sastri Award prescribes punishment of dismissal for the charges of misconducts, as has been urged by Mr. Paithankar learned Counsel for the first party/employer. Therefore, no fault can be found in the punishment imposed on behalf of first party/employer against the gravity of misconduct of charges proved against second party/workman in the aforementioned circumstances. Thus, there can be no illegality impropriety on the part of the first party/employer while awarding punishment to the second party/workman in the aforementioned circumstances. Consequently, the second party/workman is not entitled for any of the relief as sought in the aforementioned circumstances in pursuant to the present Reference. Accordingly, I have answered the issues in negative and pass the following Award.

AWARD

1. The Reference is answered in the negative.
2. The four copies of the Award be sent to the Appropriate Government for publication.
3. No order as to costs.

Date : 22.03.2013

D. B. PATANGE, Presiding Officer & Judge

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 04/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-22012/19/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th October, 2018

S.O. 1577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 23.10.2018.

[No. L-22012/19/2014- IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/04/2014

Date: 04.09.2018

Party No.1 : The Manager,
Western Coalfields Limited,
Kanhana Area, Dungaria,
PO: Dungaria, Ghorawadi Khan,
CHHINDWARA (M.P.).

Versus

Party No.2 : Joint Mahamantri,
Rashtriya Koyla Khadan Mazdoor Sangh
(INTUC), Shramik Shakti Bhawan,
PO: Chandametta,
Dist- Chhindwara (M.P.).

AWARD

(Dated: 4th September, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their union, Rashtriya Koyla Khadan Mazdoor Sangh (INTUC), for adjudication, as per letter No.L-22012/19/2014-IR (CM-II) dated 09.05.2014, with the following schedule:-

"Whether the action of the Chief General Manager WCL Kanhana area at Dungaria Distt. Chhindwara imposing the work of Registration Clerk to Smt. Jamwati w/o. Ramesh Sub Station Attender at Ghorawadi Colliery no.1 and not giving promotion and other benefits is justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due, but the workman did not appear or file statement of claim. It shows that, workman is not interested to continue this reference. This reference is pending from 22.05.2014. So, reference is closed. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 05/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-22012/25/2014—आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th October, 2018

S.O. 1578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 23.10.2018.

[No. L-22012/25/2014—IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No.CGIT/NGP/05/2014

Date: 04.09.2018

Party No.1 : The Manager,
Western Coalfields Limited,
Kanhana Area, Dungaria,
PO: Dungaria, Ghorawadi Khan,
CHHINDWARA (M.P.).

Versus

Party No.2 : Joint Mahamantri,
Rashtriya Koyla Khadan Mazdoor Sangh
(INTUC), Shramik Shakti Bhawan,
PO: Chandametta,
Dist- Chhindwara (M.P.).

AWARD

(Dated: 4th September, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their union, Rashtriya Koyla Khadan Mazdoor Sangh (INTUC), for adjudication, as per letter **No.L-22012/25/2014-IR (CM-II) dated 09.05.2014**, with the following schedule:-

“Whether the action of the Manager, Ghorwadi Mine, WCL, Kanhan Area, Distt. Chhindwara for not allowing to join his duty of Shri Raghuvir S/o Bhawani Dresser , Ghodawadi Mine from 13.06.2011 to 15.12.2013 without any reason is justified? If not, to what relief the concerned workman is entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due, but the workman did not appear or file statement of claim. It shows that, workman is not interested to continue this reference. This reference is pending from 22.05.2014. So, reference is closed. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 30/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2018 को प्राप्त हुआ था।

[सं. एल-22012/229/एफ/1993-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th October, 2018

S.O. 1579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 23.10.2018.

[No. L-22012/229/F/1993- IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/30/2007

Date: 11.09.2018

Party No.1 : The Senior Regional Manager,
Food Corporation of India, Regional Office,
Mistry Bhawan, Church Gate,
Mumbai.

The District Manager,
District Office, Food Corporation of India,
Ajni, Nagpur.

Versus

Party No.2 : The President,
Indira General Kamgar Sanghatana,
(Regd. No.3973), Near Gujar Akhada,
Tulsibagh Road, Mahal,
Nagpur.

AWARD(Dated: 11th September, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their Union Indira General Kamgar Sanghatana, for adjudication, as per letter No.L-22012/229/F/93-IR (CM-II) dated 07.06.2007, with the following schedule:-

“Whether the demand of Indira General Kamgar Sanghatana, Nagpur for re-engagement of 43 terminated workers is legal & justified? If, so, to what relief such workers are entitled?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union, Indira General Kamgar Sanghatana ("the Union" in short) filed the statement of claim and the management of District Manager, Food Corporation of India, ("party no.1" in short) filed the written statement.
3. Workman filed a statement of claim through the union by asserting that, the Union register under trade union said Act, 1926. The Claimant workers work the member of the union. Workmen work employed by the management in the capacity of loaders/ labours on daily wages Mathadi an protective labour boards/contractor directly according to the union the service of labours work utilizes the management of the FCI that is Part No.1, at various Godown situated at missal, Mishra and Ajni. The service work is utilized for opening and closing Godown cleaning and sweeping of premises, collecting the loose grains, stitching of bags loading and unloading etc.
4. According to union upto 1974 the Causal Labourers were engaged at Ajni Godown on Contract system. The Party No 1 engaged all the 43 workmen work doing regular nature of work and re entailed to be recruited on regular basis. However, the management FCI started recruited casual labourers from outside and they work being regularized so few labourers filed a writ petition No. 2305/1991 before the Hon^{ble} High Court Judicature at Bombay Bench Nagpur. Some labourers employed through Mathadi unprotected labour Board, Nagpur. According to union, a few of them had been recruited leaving 103 employed, the stating that they were employees of Board.
5. According to union vacancies are in existence. Despite this the employees being represented by this union are not being considered. The Union submits that conciliation proceedings be held and in the absence of statement a dispute may be referred to the appropriate tribunal for adjudication as per provisions of law. During the pendency of the present dispute, it is respectfully submitted that the management of the Food Corporation of India be restrained from recruiting any employee in this region. The FCI are placed in appropriate pay scale.
6. It is submitted that there are three different sets of employees, who needs to be considered as has been done in the past viz. 1) Direct casuals, 2) Employed through contractor 3) Through Mathadi Board, Recruitment has been made and preference has been given for recruitment on all previous occasions and no change can be effected in it without giving notice of change as required by Section 9-A of the Act.
7. It is further submitted that the member employees of the claimant union are then terminated retrenched employees of the management and they are entitled for reemployment as per the provisions of Section 25(H) of the Industrial Dispute Act and the provisions of Standing Orders. The claimant union submits that though the vacancies are available the members of the claimant union are not being considered for re-appointment by the management of FCI.
8. The claimant then filed writ petition before the Hon^{ble} High Court Nagpur Bench Nagpur wherein Hon^{ble} High Court has directed them to give preference if they are eligible for the appointment by relaxing age and qualification. They also asserted that Part No.1 FCI filling the vacancy by transferring the employees from the West Bengal which are totally illegal. So they pray that reference answering the positive and declare action of the Party No.1, not providing re employment of the workers, illegal and workers are entailed to regularization and employment under Section 25(H) of I.D. Act and required any pray for other relief.
9. Party No.1 had filed written statement by astern that workmen work the member of the above union. It is also denied that there is any master servant relationship with member of the Union and Food Corporation of India management. The statement made by the Union/Claimant that their members were regularized is false and hence, denied. The Union is engaged by the contractor to whom members were alleged to be engaged. Since there was contract labour system, the members are not entitled for claim any benefit from FCI.
10. It is admitted that the FCI was established, as per the provisions of FCI Act 1964. The contents of this para are nothing but repetition of pars 2 of the statement of claim filed by the clamant/union and therefore, need no reply. The claimants have furnishes the names of members of their union. In absence of this it is not possible to file reply. That the members of the Union ought to have file the order of appointment or ought to have filed the documents to show that they were engaged directly by the Food Corporation of India.
11. The Contract labour system was adopted by the Food Corporation of India and the contract was given to the Agency by following proper procedure. In the year 1988, Balraj, Misal and Mishra Godowns were closed. That, because

of closure, the contract with the Agency was cancelled. It is denied that those employees were doing the work of regular nature and therefore, they are entitled to be recruited on regular basis. The Food Corporation of India were regularized for handling over at Misal Godown's as confirmed by the Secretary, Mathadi Labour Board (MLB, Nagpur) vide letter No.MULP/UG/2879/92 dated 03/07/1992. The filing of the Writ Petition No.2305/1991, as a matter of records, that the claimant Union ought to have filed order passed by the Hon'ble High Court in Writ Petition No.2305/91 in absence thereof, adverse interference can be drawn the claimants.

12. The Union that their members were engaged through the contract labour system, they are not entitled for the regularisation. Similarly, in view of the decision of Hon'ble Supreme Court of India, reported in (2005)7 Supreme Court cases Page No1. (State of Karnataka Vs Umadevi) daily wages, contract labourers, casual workers are not entitled to claim for regularisation. It is denied that there is any violation of provisions of Section 21-F of Industrial Dispute Act as alleged by the Union Claimant. The members of the Union were never engaged by the Food Corporation of India-Management directly. They are engaged through the Agency and therefore, they are the contract labourers.

13. In the present case, the members were never made permanent nor made engaged by the management nor any seniority list is maintained or prepared by the management. The Claimant ought to have filed the order whereby management is restrained from recruiting the employees. That, the said reference is filed only with an intention to get the advantage of pay scale. As the members were engaged through contract labour system.

14. That there is no necessity to give notice under Section 9-A of the Act and thus, there is no violation on the part of employer Management. It is denied that the members of the Union are entitled for re-employment as per provisions of 25-H of the Industrial Disputes Act and the provisions of the Standing Order. That, the name of the persons enclosed with the statement of claim and affidavit filed before this Hon'ble Court is not tallying with the list of employee filed before this authority. The Food Corporation of India recruited employees in their place.

15. It is submitted that the transfer of the employees from one place to another is not filling vacancies but to accelerate the work only. Transfer cannot be said to be an appointment or reappointment and therefore, the claim filed by the claimant/union is baseless. Party No.1 Pray that reference is false and liable to be rejected.

16. **Point of determination:**

- (a) Whether the demand of union for re-engagement of 43 terminated workers is legal and justified?
- (b) Whether the workmen entitled to any relief?

Reasons of determination

17. On behalf of the workman, Shri Samiyaram Ramdhin Deshlahare, (P.W.1), Shri Anandrao Jairam Gorle, (P.W.2), Shri Pandurang R. Verma, (P.W.3), Shri Narayan Laxman Gajbhiye, (P.W.4) and on behalf of management Shri G.R. Sonaye, (M.W.1) and Shri Anil B. Vhavan, (M.W.2) work examine in court on basis of Affidavit of Evidence which was cross examine by opposite party. I want to discuss case laws filed by management.

18. Management relied on case laws: - **FCI Vs Palaram and Others,(2008) 14 Supreme Court Cases 32) and Secretary State of Karnataka Vs Umadevi and others (2006) Part 4 SCC page No.1** in which following principal were laid down :—

- (i) “Head, a corporation may therefore have more than one establishment – It requires serious consideration whether in the absence of any valid notification abolishing contract labour, the same could be held binding on other establishment – High Court overlooked this aspect.”
- (ii) Some persons were employed as watchmen/security guards through contractors/security agencies. It is wrong that the appointment was shown to be through contractor. The correct position is that the said workmen were employees of the contractor. No watchman, who was the employee of the contractor, was given appointment letter by the answering respondent. Whether the contractor concerned issued any appointment letter or not in the knowledge of the answering respondent, this fact can be disclosed by the contractor.” ----- Thus not maintainable.
- (iii) Since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure establishment by law for public employment and would have to fail when tested on he touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.
- (iv) “The court is not expected to issue directions for making such persons permanent in serviceThe direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by regular process of selection..... will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this **Court under Article 142** of the Constitution to do justice to them.”

19. I want to mentioned here latest legal position which was propounded in following case laws:- B.C. Ramkrishna Vs. State 2003 LIC 1014 (Karnataka), Dr. Mrs. Chanchal Goyal Vs. State of Raj 2003 LIC 1141 (SC), Ashiwani Kumar vs. State of Bihar 1997 LIC 578 (SC), M.P. State Agro Vs. S.C. Pande 2006 SCC(L&S) 434, Delhi Development Vs. Delhi Administration 1992 SCC(L&S) 805, Secretary State of Karnataka Vs. Umadevi 2006 SCC(L7S) 753, State of Karnataka Vs. G.V. Chandrashekhara 2009 I SCC(L&S) 834, Vice chancellor Lucknow Vs. Akhilesh Kumar 2016 I SCC(L&S) 186 and Talwara Cooperative Vs. Sushil Kumar 2008 2 SCC(L&S) 931, in which, following principles are laid down:—

- i. Held, “The challenge to the order of dismissal passed against the petitioner on the ground of long continuance as ad hoc/temporary employee would not be tenablemere continuance does not imply such waiver.....no waiver which would be against requisite compliances can be countenanced”.
- ii. Held, “Right to regularisation, if any, on completion of 240 days’ continuous service.....by itself would not confer any legal right upon him to be regularized in service”.
- iii. “Absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited dehors the constitutional scheme of public directions amount to creating another mode of public appointment, which is not permissible”
- iv. It is also held that, in para 54 in the case of 2006 SCC(L&S) 753, it is also held that, “Those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents”.
- v. Ad hoc appointments continuing for a long time, reiterated, cannot be ordered to be regularized.
- vi. Daily wagger, considering that, respondent was out of employment for more than 20 years and could not seek regular appointment elsewhere due to over age, compensation of 4 lacs directed to pay to each respondent.

I relied all principles laid down in the above case laws. Now, I want to discuss factual argument of the workman first.

20. Now I want to see the evidence of workman. As I stated above Union examined so many witnesses PW-1 Mr. S.R. Deshlahare, PW-2 Anandrao Jairam Gorle and PW-3 Pandurang R. Verma are categorically stated in chief examination on evidence on affidavit, asserted that they employed by Party No.1 in F.C.I. Ajni during the period of 1979 to 1988. Their name mentioned in the Muster Register maintained by Party No.1. They also asserted that they have filed certain documents but all these witnesses are admitted in cross-examination they were engaged by the contractor at Misal Godown up to 1988. This godown was closed in 1988, after that they do not worked with F.C.I. They also admitted that no appointment order of termination order was issued by Party No.1. Mr. Gorle and Pandurang also admitted that they do not file any appointment letter issued by F.C.I. or any termination letter or any document supports their claim. Mr. Pandurang also admitted that he did not file any document which shows he worked in F.C.I. as a Loader.

21. All Union witnesses asserted that they worked in F.C.I. Ajni and employed by the Party No.1 but Mr. Gajbhiye (PW-4) admitted that they were engaged to the Godown belonging to Agriculture Department but he did not tell that the his date of initial engagement or date of engagement of other 43 workers. He in Para 8 of his examination asserted that he and other workers were initially engaged in Koradi Godown which was closed in 1988 but other three workers admitted that they were working at Misal Godown. It shows that, major contradiction between this evidence, moreover the statement of witnesses also do not support by any documentary evidence e.g. appointment letter, termination letter or proof of wages etc.

22. Witnesses examination by the union as well as by Party No. 1 (FCI Management) admitted that they are engaged by contractor or Mathadi and unprotected labour board. They also admitted that payment of wages was made by the Contractor. At the time of argument, management filed Certificate of Registration dated 15/01/1987 in which M/s. Friends Transport, Santra Market, Nagpur was registered and District Manager, Food Corporation of India, Ajni, Nagpur registered under Contract Labour (Regulation & Abolition) Act, 1970. This also shows that labour was engaged by Party No.1 through contractor.

23. Now, I want to see the evidence of Party No.1 (Management FCI). They examined Gopal Singh R. Sonaye (MW-1), who was ex-employee of F.C.I. and Asstt. General Manager Mr. Anil B. Chavhan (MW-2). They categorically support the version of written statement and defence taken by Party No.1. In para 17 & 18, witness MW-2, Anil B. Chavhan admitted that he was initially posted as Labour Inspector in F.C.I. thereafter he promoted as a Chief Labour Inspection in the year 2000, he know the working of labours and he was also posted at Nagpur. He also asserted that there were three private depots hired by F.C.I. namely Mishra, Misal and Balraj. Labours were brought from Santra Market through private contractor for transporting from Railway Station to Godown and vice versa.

24. According to him, contractor were allotted by accepting tender and followed by agreement executed between contractor and F.C.I. He also asserted that contractor hired labour to unload food grains from railway wagon and load in

truck and same is required from unloading to godown. He denied that F.C.I. employed labour. This witness testimony remains unrebuttal so it appears to be reliable.

25. MW-1 Anil B. Chavhan in para 19 to 22 asserted that before departmentalization in Nagpur contract labour were working. He also asserted that independent railway siding in F.C.T. at Ajni Godown. According to him, on 01/04/1991, first the departmentalization was considered. Some departmentalization was taken place in 1994. In this process F.C.I. adopted the policy for engaging contract labour on the basis of formula namely “Average total out of last three years divided by one sixty five” but he is not certain about the ratio of Mathadi Labour and departmental labour. He asserted in Para 27 of his cross-examination that no post was vacant in F.C.I. in available workers. He also admitted that Hon’ble High Court directed F.C.I. that they can consider contract labour. He also admitted that F.C.I. does not consider their (Workmen) claimed because they do not file such claim before the F.C.I.

26. MW-1 Anil B. Chavhan in para 19 to 22 & 30 of his cross-examination admitted that department does not prepare record of any contract labour. He also asserted that Document No.Exb. W-III was prepared by the contractor and signed by the officer of F.C.I. He also admitted that on 02/08/2003, 6 labours were appointed by F.C.I. but these appointments related to compensatory appointment. He also admitted that document Exb. W-VI were shows that 53 vacancy were there, Regional Manager, Sought permission from the Headquarter to fill up the post but these posts were staff category. He also admitted that on 09/03/2005, some workers were transferred from West Bengal to Nagpur. On perusal of his statement his evidence appears to be reliable.

27. According to him (MW-1) Anil B. Chavhan, he explains that there is difference between the scarcity and vacancy. He also admitted that Union filed W.P. No.3466/1994 in which Hon’ble High Court issued direction but according to him, claim of 103 workers is still pending because there is no clear cut vacancy. Ongoing statement of these witnesses, it appears that they remain unrebutted in his testimony. Even they are management’s witnesses but do not show that they speak some untrue facts or giving statement contrary to these documents. There evidence also not contradicts with Union evidence in major issues. So, statement of these witnesses appears to be true.

28. Judging the present case in hand with the touch stone of principles as mentioned above, as I observed that, workmen were not appointed by the management but they were employee of contractor. I also observed that management and contractor both are registered under Contract Labour (Regulation & Abolition) Act, 1970. In my opinion workmen were not treated as employees of management (Party No.1), so decision of the management not to re-employ 43 workmen is not called out as illegal or unjustified, because Party No.1 had taken their work through contractor on the basis of decision taken by superior authority. Hence it is ordered:-

ORDER

The demand of Indira General Kamgar Sanghatana, Nagpur for re-engagement of 43 terminated workers is not legal & justified and workmen are not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 72/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल-22012/40/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह अनुभाग अधिकारी

New Delhi, the 25th October, 2018

S.O. 1580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.10.2018.

[No. L-22012/40/2015-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 31st day of July, 2018**INDUSTRIAL DISPUTE No. 72/2015****Between:**

Sri Ramagiri Mallesh,
S/o Sri Banaiah,
H.No.7-2-843, Ganganagar (V),
Ramagundam (M) – 505209.
Karimnagar Dist.. (Telengana State).

... Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area, Godavarikhani – 505209.
Karimnagar Distt. (Telengana State).

... Respondent

Appearances:

For the Petitioner : None

For the Respondent : M/s. N. Krishna Rao & N.S. Pattabhi Rama Rao & Dasaradha Ramulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/40/2015-IR(CM-II) dated 29.7.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt., in terminating the services of Sri Ramagiri Mallesh, Ex- Badli Filler, GDK-2 Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 30.4.2001 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 72/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Notices to the Petitioner returned unserved. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. Hence, it is not desirable to linger the case to any further date. Thus, the case of the Petitioner is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 31st day of July, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स एम.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 97/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—22012/34/1999—आईआर (सीएम—II)]

राजेन्द्र सिंह अनुभाग अधिकारी

New Delhi, the 25th October, 2018

S.O. 1581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of M/s. M.C.L. and their workmen, received by the Central Government on 24.10.2018.

[No. L-22012/34/1999—IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 97/2001

Date of Passing Order – 28th August, 2018

Between:

The General Manager,
Ib Valley Area, Mahanadi Coal
Fields Limited, Po. Brajrajnagar,
Dist. Jharsuguda.

...1st Party-Management

(And)

The General Secretary,
Brajrajnagar Coal Mines Workers Union,
At./Po. Lamtibahal, Dist. Jharsuguda.

...2nd Party-Union.

Appearances:

None.

...For the 1st Party-Management.

None.

...For the 2nd Party-Union.

ORDER

The 1st party-Management is present through its authorized representative whereas none appears on behalf of the 2nd party-Union on repeated calls. It is seen from the record that the dispute having been referred by the Government of India in the Ministry of Labour vide its letter No. 22012/34/99/IR(CM-II), dated 22.11.1999 in exercise of its power conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act with the schedule “Whether the demand of the Brajrajnagar Coal Mines Workers Union for regularization with back wages of 60 contract labourers (list enclosed) who have been engaged in permanent and perennial nature and prohibited category of job at Lajkura Open cast Mines since last 10 years is justified? If so, what relief are the workmen entitled to?” The parties to the dispute were noticed. Pursuant to such notice the parties filed their statements and when the reference was pending for hearing, the Management moved a petition for engagement of a legal practitioner to prosecute its case. The

petition having been rejected in view of the provisions of Section 36(4) of the Act a writ appeal was preferred against such order of rejection as a result of which the further proceeding of the adjudication of the dispute was stayed till disposal of the writ by the Hon'ble High Court. However, the writ appeal having been disposed of on 3.8.2017 allowing the Management to engage an Advocate of its choice to prosecute the reference with a direction to the Tribunal for expeditious hearing and disposal of the dispute, the parties were informed and noticed to make their appearance for disposal of the reference case. Thereafter, the Management made his appearance whereas the 2nd party-Union fails to take any step till today inspite of notice being sent by reg. post as well as through labour machinery. The reference is related to the year 1999 and the process of adjudication of the dispute cannot be prolonged for an indefinite period by mechanical adjournments to secure appearance of the 2nd party-Union. The notices sent to the Union seem to be sufficient and as such I am constrained to draw an inference that the 2nd party-Union is not probably interested to prosecute its claim. Hence, in absence of evidence and materials on behalf of the 2nd party-Union there is nothing before me for adjudication of the dispute which has been referred to. It is pertinent to mention here that until adjudication of the dispute referred to by the authority concerned, an award cannot be made within the meaning of the award as defined under section 2(b) of the Act. There is also no provision in the Act to pass a no-dispute award or nil award in case the disputant fails to make appearance and prosecute its claim. In that view of the matter passing of a no-dispute award or nil award for absence of the disputant/parties would be a misconception and the above position has been settled by the Hon'ble High Court of Orissa in the case between M/s. IDL Chemicals Limited –versus- P.O. Labour Court, Sambalpur reported in 72(1991)CLT 73 and in the decision of the Calcutta High Court in the case of B.R. Bermen and Mohatta (India) Pvt. Ltd., -versus- Seventh Industrial Tribunal, West Bengal and others short noted in 1977 Lab. I.C. (NOC) 13 (CAL). It has been also held by the Hon'ble Courts that so long as the dispute remains unsettled and the proceeding came to an end without adjudication of the dispute between the parties, there is no bar under the Act whereby the Government is precluded from referring the dispute over again so that there may be an industrial adjudication as contemplated by the Act.

2. Having regard to the above facts and circumstances as well as settled principles I am constrained to dismiss the case registered on the reference of the dispute without any award and accordingly the reference is disposed of. A copy of this order be sent to the Government of India, Ministry of Labour for necessary action at their end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2018

का.आ. 1582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसी 58/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—22013/01/2018—आईआर (सीएम—II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th October, 2018

S.O. 1582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 58/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.10.2018.

[No. L-22013/01/2018—IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 4th day of July, 2018

INDUSTRIAL DISPUTE L.C.No. 58/2010

Between:

Sri Doota Shanker,
 S/o Marati,
 C/o Smt. A. Sarojana,
 Advocate, Flat No.G7,
 Rajeshwari Gayatri Sadan,
 Opp: Badruka Jr. College for Girls,
 Kachiguda, Hyderabad .

... Petitioner

AND

1. The General Manager,
 M/s. Singareni Collieries Company Ltd.,
 Srirampur Area, Srirampur,
 Adilabad District.
2. The Superintendent of Mines,
 M/s. Singareni Collieries Company Ltd.,
 RK-5 Incline,
 Srirampur Area, Srirampur,
 Adilabad District.

... Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri S.M. Subhani, Advocate

AWARD

Sri Doota Shanker who worked as Coal Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. SRP/PER/13.008/6373 dated 26.11.2004 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as Badli Filler in the year 1985 and subsequently got confirmed as Coal Filler in the year 1987. While so, during the year 2003 the Petitioner could not be regular to his duties due to his ill-health and other family problems. He went to his native place for treatment. When he became fit, he reported for duty, but he was not permitted to perform his duties, on the ground that he was already dismissed from service w.e.f. 1.12.2004. The Petitioner was not aware either about issuance of charge sheet by the Respondents or the order of dismissal. The allegation is that the Petitioner absented for duty during the year 2003, as he did not attend the enquiry on the scheduled date, an ex-parte enquiry was conducted, and he was dismissed from service. It is stated that the Petitioner was undergoing treatment in his native village and he was not aware of either issuance of charge sheet or publication made by the Respondents in the newspapers. The Petitioner could have certainly participated in the enquiry, if really he was in receipt of the charge sheet or notice of paper publication. It is stated that the Petitioner was unable to perform his duties regularly during the year 2003 only on account of his ill-health and other family problems, for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 26.11.2004. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered about 17 years of continuous service in the Respondents' management. He remained absent from duty only on account of his sickness which ought not to have been treated as a serious misconduct. The Petitioner made the above stated submissions, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 26.11.2004. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned

order No. SRP/PER/13.008/6373 dated 26.11.2004 issued by the Respondents as illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the claim petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner had remained absent unauthorizedly from duty without sufficient cause on a number of days and attended 33 days for duty during the calendar year 2004. A charge sheet was sent to him in his last known home address as per the procedure, as he was not attending for duty, which was returned as refused by the Petitioner. Subsequently, the same was published in Andhra Jyothi Telugu daily newspaper dated 10.6.2004 advising the Petitioner to attend an enquiry fixed on 15.6.2004. The Petitioner neither submitted any explanation to the charge sheet nor attended the enquiry, as such an ex-parte enquiry was conducted on 15.6.2004 wherein the charges levelled against the Petitioner were proved. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. In view of the memo filed by the counsel for the Petitioner, stating that though the Petitioner has disputed the issue of validity of the domestic enquiry, now the Petitioner is no more interested in prosecuting the said issue, and the court be proceeded further in the matter basing on the evidence available on record. In view of the memo filed by the Petitioner the domestic enquiry conducted in the case by the Respondent was held legal and valid.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Doota Shanker is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No. I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness and family problems, the Petitioner could not be able to attend his duty sincerely. Though the Petitioner has mentioned the above facts in his show cause but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. But the authority has not considered any of the submissions of the Petitioner, and has imposed capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to ill health and other family problems of the Petitioner, he could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 44 years, he is now aged about 52 years and is searching ways and means to provide bread and butter to his family members. The Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to the court to work in the mines at the age of 52 years. In such a circumstances, atleast one chance should be given to him for reinstatement into service in order to save his family members. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has already worked 17 years under the Respondents. While imposing capital punishment

to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Doota Shanker is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Doota Shanker is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service and has come to the court after expiry of 6 years of the order of dismissal. Thus, in the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. SRP/PER/13.008/6373 dated 26.11.2004 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Doota Shanker be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 180 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 4th day of July, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL